

09.12.2021
tkm/ct 28
sl no. 82

C.R.M. 5649 of 2021

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Mongalkote P.S case no. 34 of 2021 dated 27.1.2021 under sections 341/326/307/302/120B/212/34 IPC

And

Allowed

In Re : Sumit Ghosh & Ors. petitioners

Mr. Milon Mukherjee, Sr. Adv.

Mr. P Ghosh

Mr. S Saha

..... for the petitioner

Mr. N Ahmed

Ms. Sujata Das

..... for the State

Mr. Indrajeet Dasgupta

..... for the de facto complainant

Petitioner no. 1 is in custody for 233 days and petitioner nos. 2 and 3 are in custody for 312 days and it is submitted on behalf of the petitioners that they have been falsely implicated in the instant case out of political rivalry.

It is further submitted that eye-witness Ibrahim Khan has not spoken of the presence of the petitioners at the place of occurrence. Oral dying declaration of the deceased to his wife is doubtful. There is no other evidence connecting the petitioners with the alleged murder.

Learned lawyer for the State opposes the prayer for bail and submits that the petitioners are members of the unlawful assembly who had brutally assaulted the deceased resulting in his death. Wife of the deceased disclosed the name of petitioner no. 1 as one of the assailants. Weapon of offence was recovered on the leading statement of petitioner no. 2.

Learned lawyer for the de facto complainant submits that Ibrahim Khan spoke of presence of number of un-named persons

who assaulted the deceased. Hence, role of the petitioners in the murder cannot be ruled out.

We have considered the materials on record. Ibrahim Khan, an eye-witness has not specifically named the petitioners at the place of occurrence. Whether they feature amongst un-named persons who assaulted the deceased requires to be assessed in the course of trial. Prosecution has strongly relied on statement of the wife of the deceased who stated while the victim was taken from Katwa hospital to Burdwan hospital he had made a statement naming petitioner no. 1 as one of the assailant. However, her version does not find corroboration from the medical papers at Katwa hospital where no one is named as assailants. Moreover, de facto complainant who was also present while the deceased was being transferred from Katwa hospital to Burdwan hospital does not speak of the purported oral dying declaration which is significantly absent in the FIR also. Hence, oral dying declaration as per version of petitioner no. 1 does not find corroboration from other materials and its credibility is to be assessed in the course of trial. Only material against petitioner no. 2 is recovery of a bamboo stick while that against petitioner no. 3 is with regard to harbouring of offenders.

In view of the aforesaid materials on record, extent of complicity of the petitioners in the alleged crime and the period of detention suffered by them and as investigation is complete, we are inclined to grant bail to the petitioners, however subject to condition.

During hearing, we are informed that trial court had enlarged some of the accused persons on bail. Bail prayer of one of the accused persons namely Raja Majhi has been assailed by the de facto complainant before this court. We make it clear that we have not expressed any opinion with regard to the order granting bail to the said accused. Neither we have enlarged the petitioners on bail on parity with the said accused persons.

Accordingly, the petitioners be released on bail upon furnishing a bond of Rs. 10,000/- each with two sureties of like amount, one of whom must be local to the satisfaction of the learned ACJM, Katwa on condition that the petitioners shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioners shall not enter the jurisdiction of Mongalkote P.S except for attending the court proceeding and shall provide the address where they shall presently reside to the Investigating Officer as well as to the court below and on further condition that the petitioners shall report to the Officer-in-Charge of the concerned P.S within whose jurisdiction they shall reside once a week until further orders.

In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

The application being CRM 5649 of 2021 is disposed of.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)