

20.12.2021.
94.
as
(Rejected)

C.R.M. 5725 of 2021

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Domkal P.S. Case No.384 of 2019 dated 16.06.2019 under Sections 302/286/34 of the Indian Penal Code read with Section 9(b) Explosive Act and Section 27 of the Arms Act.

In the matter of : Sohid Sk. @ Sahit Mondal
@ Sahit Sk. & Anr.

...Petitioners.

Mr. Sekhar Kr. Basu, Id. Sr. Adv.,
Mr. Antarikhya Basu,
Mr. Diptangshu Basu,
Mr. Sayan Mukherjee,
Ms. Madhumita Basu.

...for the Petitioners.

Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

...for the State.

Heard the learned Advocates appearing for the parties.

Petitioner No.1 is in custody for about 563 days and the petitioner no.2 is in custody for about 730 days. It is further submitted that co-accused persons have been enlarged on bail. Bail of one of the co-accused was assailed in the Apex Court which, however, was turned down by the said Court in Special Leave to Appeal (Crl.) No.1188 of 2021. It is also submitted that co-accused Harun Al-Rashid(who stands on the same footing with the petitioner) has been enlarged on bail by a Co-ordinate Bench of this Court.

Learned Advocate appearing for the State opposes the prayer for bail and submits that the petitioners do not stand on the same footing with the co-accuseds who have been granted bail in the present case. Harun Al-Rashid was

enlarged on bail on an erroneous concession made by the State that he stood on the same footing with other co-accuseds who are on bail. Petitioners have been attributed with specific overt act of firing at the victims in the first information report.

We have considered the materials on record. First information report categorically states that the petitioners along with one Sariful Halsana (in custody), Golam Gous Reja (in custody) and Harun Al-Rashid (on bail) had fired at the victims who succumbed to their injuries. Other co-accused persons were alleged to be members of the unlawful assembly but no specific overt act had been attributed to them.

Under such circumstances various Benches of this Court had enlarged the said co-accused persons on bail. In one of such application being CRM 3479 of 2021 Harun Al-Rashid was a petitioner along with others. On an erroneous assessment, State had conceded that all the petitioners therein stood on the same footing with co-accuseds who have been enlarged on bail. Factually, Harun Al-Rashid stood on a completely different footing and the concession made qua Harun-Al-Rashid was clearly incorrect and perverse. Grant of bail to an accused on incorrect concession cannot be a ground to release others on bail on principle of parity. To do so, would amount to perpetuation of a patent illegality.

Under such circumstances and in view of the primary role played by the petitioners in shooting the victims who succumbed to their injuries, we are of the opinion that this is not a fit case to grant bail to them.

Accordingly, the prayer for bail of the petitioners is rejected.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)