

02.11.2021
Item no.14.
Court No.8.
AB /PG

CRM No. 6875 of 2021

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Nalhati Police Station Case No.146 of 2021 Dated 14.05.2021 under Sections 302/201 34 of the Indian Penal Code

And

In the matter of : Mainuddin Sk. @ Mainu & Anr.

.....Petitioners.

Mr. Shekhar Basu, Sr. Adv,
Mr. Pritam Roy,
Ms. Arushi Rathorefor the Petitioners.

Mr. Y. J. Dastoor, Id. ASG,
Mr. Phiroze Edulji,
Mr. Samrat Goswamifor the CBI.

Mr. Madhusudan Sur, Id. APP,
Mr. Dipankar Paramanik....for the State.

Application for bail is made on the basis of a three fold argument advanced by Mr. Sekhar Basu, learned Senior Advocate appearing for the petitioners. It is firstly submitted that the arrest memo does not indicate any intimation given to any relative. Reference in this regard is made to the decision of the Supreme Court in the case of **D. K. Basu Vs State of West Bengal** reported in **AIR 1997 SC 610** followed in the context of

the facts in CRR No.5708 of 2018 in order dated August 10, 2018 by a Coordinate Bench.

This Court is of the view that non compliance of the provisions of Section 41B of the Code of Criminal Procedure albeit insisted upon by the Hon'ble Supreme Court in the **D. K. Basu** decision above would not necessarily by itself be fatal to any investigation or trial or any proceeding. The same may, however, otherwise indicate lapses that may be interpreted as mala fide.

It also appears that the arrest was initially made by the State Police. The investigation was subsequently transferred to the CBI at the directions of a Special Five Judge Bench of this Hon'ble Court.

Mr. Dastoor, learned Additional Solicitor General appearing for the CBI submits that they have received documents from the State Police, which indicate that certain relatives of the petitioners were informed at a point of time.

The next argument canvassed by Mr. Basu is that the FIR and investigation and documents as of now do not reveal any motive or any act or omission indicating the complicity of the petitioners in the crime allegedly. Reliance in this regard is placed on the initial statement of the wife of the victim where she has in no uncertain terms stated that there is no political rivalry or political angle involved in the death of her husband. She has also stated that there is no rivalry between the

petitioners and her husband at any point of time and that they were friends.

The CBI, however, relies upon a further statement made by the wife where details of political rivalry between the victim and the petitioners are stated.

It is also submitted that there are a large number of other eyewitnesses to the incident which, according to the CBI, who have stated as follows :-

That the victim was dragged out of his employee's Eid party and severely assaulted along with another person. The said other person and the victim had pleaded for their life. The other person was allowed to leave but the victim was not spared. The CBI also relies upon certain mobile phone recordings of the victim, which are claimed to have been found subsequently.

It is also submitted that a large number of other eyewitnesses are extremely apprehensive and afraid of deposing evidence at this stage.

In view of the above and considering the fact that motive in a crime is ascertained in course of trial and it would be too premature for this Court to come to a conclusive finding as regards absence of motive.

The third argument of Mr. Basu is that the only statement in the FIR and the investigation by the State Police is that the victim was on a motorcycle between the rider, petitioner no.1 and the pillion rider, the petitioner no.2. A bamboo stick was being carried by one of the three. This, according to Mr.

Basu, is very flimsy to continue any prosecution or criminal proceeding against his clients.

For the reasons already indicated hereinabove and the fact that investigation is still on, this Court cannot countenance the said argument or accept the same, particularly while considering a prayer for bail.

It is submitted by the CBI that during the course of their investigation, some witnesses have already changed their original statements and the same have been produced in Court. The CBI is not desirous of disclosing the same to the petitioners for fear of the investigation being impeded. This Court has, however, seen the said statements.

The last argument of Mr. Basu is that the CBI in their report have already found that the matter is not in any way related to post poll violence. Reference in this regard is made to para 16.4 of their report annexed to the application for bail.

Mr. Dastoor submits that given the new statements of the witnesses, the said initial report of the CBI is required to be reviewed / revisited.

Be that as it may, this Court is of the view that the incident, which has occurred, whether it relates to post poll violence or not is not relevant at this stage. There is a crime that has been committed. There is some evidence that the CBI has to indicate the complicity of the petitioners. Needless to mention, these are not conclusive and the same are required to be established in course of trial.

In the backdrop of the aforesaid facts, this Court is of the clear and unequivocal view that the application for bail made by the petitioners cannot be entertained and is liable to be dismissed at this stage.

Case Diary and statements produced before this Court by the CBI are returned.

Counsel for the State of West Bengal has submitted that since investigation has been transferred to the CBI, they have nothing to say in the present proceeding. The instructions received by Counsel for the State are taken on record.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Rajasekhar Mantha, J.)

(Kesang Doma Bhutia, J.)