

24.02.2021
Court No.28
Item No. 03
Krishnendu
Bail Granted

**CRM 10116 of 2020
(Via video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Abhay Kumar @ Abhay Tiwari @ Abhay Kumar Tewari & Ors.**
Petitioners

Mr. Milon Mukherjee, Sr. Adv .
Mr. Sourav Chatterjee
Mr. Dattatreya Dutta

For the Petitioners

Mr. Swapan Banerjee
Mr. Suman De

For the State

Mr. Sabyasachi Chatterjee
Mr. Arkadeep Mukherjee
Ms. Debalina Sarkar

For the De facto Complainant

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioners in connection with Belghoria Police Station Case No. 239 of 2020 dated 04.05.2020 under 304/34/302 of the Indian Penal Code.

Mr. Mukherjee, learned senior advocate appearing for the petitioners submits that the petitioners have been falsely implicated. No overt act has been specifically attributed to the petitioners and the allegations levelled are in the abstract. Upon completion of investigation, charge sheet has also been filed and as such further detention of the petitioners, who are in custody for more than 280 days is not warranted.

He further submits that a co-ordinate Bench of this Court granted anticipatory bail in favour of four co-accused persons by

an order dated 9th October, 2020 passed in CRM No. 7350 of 2020. The petitioners herein are similarly situated with the said co-accused persons and on the ground of such parity, the petitioners are entitled to bail.

He informs this Court that the principal accused, namely, Rupali Sarkar surrendered before the learned Magistrate on 10th July, 2020 and was granted bail. The *de facto* complainant thereafter preferred an application for cancellation of bail. Such prayer for cancellation of bail was rejected by an order dated 12th August, 2020.

Mr. Chatterjee, learned advocate appearing for the *de facto* complainant submits that all the petitioners herein are directly involved in the alleged offence. There are materials on record which disclose the direct involvement of the petitioners. From the medical report of the deceased, it would be evident that the petitioners along with other persons had assaulted the son of the *de facto* complainant, who ultimately succumbed to the injuries inflicted. The gravity of the offence, the nature of the crime and the extent of complicity disentitles the petitioners from being enlarged on bail.

Mr. Banerjee, learned advocate appearing on behalf of the State opposes the petitioners' prayer for bail and draws our attention to several documents in the case diary.

Records reveal that the incident occurred on 3rd May, 2020. The injured, namely, Soumen Das, expired about sixteen days thereafter on 19th May, 2020. A revision application, being CRR

1081 of 2020 preferred by the *de facto* complainant was disposed of on 14th August, 2020 with a direction towards incorporation of section 302 of IPC in the charge sheet. Subsequent thereto, a supplementary charge sheet dated 30th August, 2020 was filed. Five co-accused persons, namely, Kaushik Dutta @ Koushik Dutta, Kartick Dutta @ Pankaj Dutta, Tinku Singh, Sumit Karmakar and Avishek Singh thereafter preferred an application for anticipatory bail and the petitioner nos.2 to 5 therein were granted anticipatory bail by an order dated 9th October, 2020.

We have perused the materials in the case diary including the statements of the witnesses recorded under section 161 of the Code of Criminal Procedure, the seizure list as well as the medical report. *Prima facie*, no overt act has been specifically attributed to the petitioners herein. The names of the petitioners do stand included in the medical report but along with the names of other co-accused persons, who have already been granted anticipatory bail after the filing of the supplementary charge sheet. The Court exercised discretion in favour of the said co-accused persons on relevant considerations and taking into account relevant factors.

The petitioners herein are in custody for more than 280 days. Investigation has already been completed and charge sheet has been filed.

In the said conspectus, we are of the opinion that further detention of the petitioners is not warranted.

Accordingly, we direct that the petitioners, namely, **Abhay Kumar @ Abhay Tiwari @ Abhay Kumar Tewari** and **Durgesh Mishra**, shall be released on bail upon furnishing a bond of Rs.10,000/- each with two local sureties of like amount each, to the satisfaction of the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas on condition that the petitioners shall not intimidate witnesses or tamper with evidence in any manner whatsoever and shall stay outside the jurisdiction of the learned Additional Chief Judicial Magistrate, Barrackpore, except for attending the Trial Court on the dates specified for hearing and for meeting with the Officer in Charge, Belghoria Police Station once a week on and from 1st March, 2021 until further orders. The petitioners shall also inform their address where they would be residing to the Officer in Charge of Belghoria Police Station.

It is made clear that in the event the petitioners fail to abide by the aforesaid conditions without justifiable cause, the learned Trial Court would be at liberty to cancel the petitioners' bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 10116 of 2020, is disposed of.

The case diary is returned to Mr. Banerjee, learned advocate appearing for the State.

(Tirthankar Ghosh, J)

(Tapabrata Chakraborty, J)

