

18.02.2021
SL No.25
Ct. No.1.
S.D.

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
(Through Video Conference)
C.R.M. 125 of 2021**

An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Mekhliganj Police Station Case No. 194 of 2020** dated **02.07.2020** under Sections **302/201/120B** of the Indian Penal Code.

And

In the matter of: **Md. Asraful Ali @ Asraful Ali**
.....Petitioner.

Mr. Partha Pratim Sarkar
...for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Mr. Abhijit Sarkar
...for the State

The Accused petitioner Md. Asraful Ali @ Asraful Ali apprehending arrest in connection with Mekhliganj Police Station Case No. 194 of 2020 dated 2.7.2020 under Sections 302/201/120B of the IPC (G.R. Case No. 290 of 2020) now pending before the Court of learned Additional Chief Judicial Magistrate, Mekhliganj, Cooch Behar has approached this Court for release on bail in the event of arrest on any condition.

It is submitted on behalf of the petitioner that the Md. Raja @ Sahanur Alam appears to be the younger brother of the petitioner who is the principal accused has been enlarged on anticipatory bail in default of submission of charge sheet within

a statutory period. It is also submitted that co-accused person has also been enlarged on bail vide order dated 1.12.2020 granted by a Coordinate Bench of this Hon'ble Court. Accordingly, the petitioner has approached for his release as he stands from the same footing as that of the co-accused who were enlarged on anticipatory bail.

Learned Advocate appearing on behalf of the State placed in service the Case Diary and invites our attention to the material evidence which relates to submission of the charge sheet after conclusion of the investigation.

We have perused the Case Diary at various pages including page 65. It is submitted that there is a strong circumstantial evidence against the accused petitioner of his involvement about the homicidal death of the victim girl. We are of the view that the opinion given by the Autopsy Surgeon in the Post Mortem Report is opinion evidence which may not be the guiding and binding factor at the trial. Be that as it may, having regard to the statements made by the witnesses placed in the Case Diary leading to submission of the charge sheet under Section 302/201/120B IPC, we are not convinced of the submission of the petitioner that the petitioner stands on the same footing as that of the co-accused persons on anticipatory bail. Therefore, the prayer for anticipatory bail, as sought for, is considered and rejected.

Accordingly CRM 125 of 2021 is disposed of.

(Hiranmay Bhattacharyya, J.)

(Shivakant Prasad, J.)