

23.06.2021

Court No.28
Item No.21

Ab

CIRCUIT BENCH OF CALCUTTA HIGH COURT

AT
JALPAIGURI

CRM 543 of 2021

With
CRAN 1 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Phansidewa Police Station Case No. 543 of 2020 dated 16.11.2020 under Sections 302/201 of the Indian Penal Code;

And

In the matter of : **Anwar Alam @ Rahul Khan.**
...Petitioner

Mr. Koustav Shome,
Ms. Esha Acharya,
Mr. Sayan De,
Mr. Sujon Kanjilal.

...For the Petitioner

Mr. Ujjwal Luksom,
Mr. Sourav Ganguly.

... For the State.

The Advocate on Record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking the application is taken up for hearing.

The application being CRAN 01 of 2021 is accordingly disposed of.

Learned Advocate for the petitioner submits that the petitioner has been implicated in connection with the instant case lauanced on the recovery of a deadbody being floated on the pond with a slit on his throat. The petitioner was apprehended subsequently on the basis of the statement of the other co-accused and the documents, which are sought to be used against the petitioner, have not been corroborated with the mandate of the statute and, therefore, the petitioner should be enlarged on bail.

Learned Advocate for the State opposes the praye for bail. It is submitted that the petitioner is a prime accused and, in fact, the offending weapon was recovered on the leading statement of the petitioner recorded during the investigation. It is further submitted

that although the other co-accused have been enlarged on bail, but they are not the principal accused, as the investigation would reveal the direct complicity of the petitioner in commission of the alleged offence. It is also submitted that the seizure list would reveal the signature of the witnesses present at the time when the offending weapon was recovered on the statement of the petitioner.

Learned Advocate for the petitioner in reply refuted the contention of the State that the witnesses sworn in the seizure list are independent witnesses.

There appears to be a disparity and discord between the statement of the respective Counsel on the witnesses who appended their signatures on the seizure list. It is thus a matter of trial to ascertain whether the paraphernalias and the formalities, which are required at the time of discovery of the offending weapon, have been duly complied with or not. Furthermore, the offending weapon was recovered on the statement of the petitioner and the other call details would also corroborate the interaction with the deceased victim. The charge sheet has already been submitted and all such points are required to be considered at the time of trial, as the entire case depends upon a circumstantial evidence.

Having considered seriousness of the allegations and that certain incriminating materials have been unearthed during the investigation prima facie linking the complicity of the petitioner to the alleged offence, we do not think that the petitioner should be granted bail even when the other co-accused have been enlarged on bail, as the petitioner does not stand on the same footing that of the others.

The application for bail being CRM 543 of 2021 is thus rejected.

(Harish Tandon, J)

(Subhasis Dasgupta,J.)