

24.08.2021

Court No.28
Item No.24
(PARTLY
ALLOWED)

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**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT
JALPAIGURI**

(Via Video Conference)

CRM 810 of 2021

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 28.07.2021 in connection with Dinhata Police Station Case No. 214 of 2021 dated 01.05.2021 under Section 307 of the Indian Penal Code read with Sections 25(1-A)/27 of the Arms Act (G.R. Case No. 231 of 2021);

And

In the matter of : **Abu Chhayed @ Tinku @ Abu Sahed @ Abu Sahid
and others.**

...Petitioners

**Mr. Kallol Mondal,
Mr. Anindya Ghosh,
Mr. Sudip Guha.**

...For the Petitioners

**Mr. Arun Sarkar,
Mr. Sourav Ganguly.**

...For the State.

The Advocate on Record of the petitioners 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.

Apprehending arrest in connection with Dinhata Police Station Case No. 214 of 2021 dated 01.05.2021 under Section 307 of the Indian Penal Code read with Sections 25(1-A)/27 of the Arms Act, the petitioners have filed the instant application for anticipatory bail.

At the very outset, learned Advocate for the petitioners submits that the petitioner no. 2 died in the meantime and, therefore, the instant application has become infructuous so far as the petitioner no. 2 is concerned.

In view of the above, the instant application is dismissed as 'infructuous' so far as the petitioner no. 2 is concerned.

The petitioners are some of the accused persons seeking benefit under Section 438 of the Code of Criminal Procedure citing a ground of parity. One of the co-accused, namely, Abual Ajad, had been granted anticipatory bail on 13th August 2021 in CRM 795 of 2021.

A case has been initiated on the allegation that the petitioners and the other accused persons surrounded the house of the victim and after beating him up suddenly opened fire at him and he suffered bullet injury and was admitted in the hospital and later on discharged.

Learned Advocate for the State could not dispute the fact that the co-accused, namely, Abual Ajad, had already been granted benefit of Section 438 of the Code of Criminal Procedure. However, it is sought to be contended that two different types of bullets were found at the spot, which would suggest the use of different firearms and, therefore, the custodial interrogation of the petitioners is very much necessary.

The aforesaid point was taken, as we are told, before the Co-ordinate Bench as well and after considering the same, a specific finding is recorded therein that there is no specific allegation against said Abual Ajad that he opened the fire or used the firearm against the victim.

We had an occasion to peruse the statement of the victim recorded under Section 161 of the Code of Criminal Procedure. Though the name of all the accused persons have been mentioned yet we find that the principal accused is petitioner no. 5 herein, namely, Mithu Mia @ Mowazzem Hassan, who, according to the statement of the said victim, opened fire on him and he sustained bullet injury.

Accordingly, the prayer for anticipatory bail so far as the petitioner no. 5 is concerned, is rejected.

We do not find any material except the allegation being omnibus in nature attributable to all the accused except the petitioner no. 5 herein and once one of the co-accused, namely, Abual Ajad, has been granted anticipatory bail, there is no justification in not extending the same benefit to the petitioner nos.

1, 3, 4, 6, 7, 8 and 9.

Accordingly, in the event of arrest the petitioner nos. 1, 3, 4, 6, 7, 8 and 9 shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer of the concerned police station and on conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with further condition that the aforesaid petitioners shall meet the Investigating Officer once in a fortnight until further orders.

In the event the aforesaid petitioners fail to adhere to any of the conditions stipulated in Section 438(2) of the Code of Criminal Procedure, the learned Court below will be at liberty to cancel the anticipatory bail without further reference to this Court.

The application for anticipatory bail being CRM 810 of 2021 is **disposed of.**

(Harish Tandon, J.)

(Md. Nizamuddin, J.)