

03.12.2021

Item No. 1

Ct.No.1

dc./gsd

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

C.R.M. 1005 of 2021

(Via Video Conference)

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Bhaktinagar P.S. Case No. 265 of 2020 dated 10.4.2020 under Sections 302/394/34 of the Indian Penal Code (GR Case No. 1448 of 2020).

And

In the matter of : **Krishna Barman & Anr.**

... Petitioners.

Mr. Biswarup Roy

... for the petitioners

Mr. S. G. Mukherjee, Ld. P.P.,
Mr. A. S. Chakraborty, Ld. A.P.P.,
Mr. Sourav Ganguly

... for the State.

Pursuant to the previous order of this Court dated 1st December, 2021, the Commissioner of Police, Siliguri Police Commissionerate is present in Court.

The requirement for the Commissioner to be present in Court arose because of lack of assistance in production of case diary connected to the case in issue both on the part of the Investigating Officer and the Inspector-in-Charge of Bhaktinagar P.S. Both the Investigating Officer and the Inspector-in-Charge are also present.

Appearing on behalf of the Commissioner, Mr. Mukherjee, Learned Public Prosecutor with Mr. Chakraborty, Learned A.P.P., produces copy of a communication dated 3rd December, 2021 bearing the Memo No. 1887/SPC-E/Legal Cell, addressed by the Commissioner of Police, Siliguri Police Commissionerate to the Learned Additional Public Prosecutor, Hon'ble Circuit Bench of High Court, Calcutta at Jalpaiguri.

In addition to addressing the issue of non-production of the case diary by the I.O. and the I.C. Bhaktinagar P.S., by way of general importance it has been notified to all police stations including Zonal Deputy Commissioners of Police and Assistant Commissioners of Police under Siliguri Police Commissionerate to ensure timely production of case diaries and monitor the process.

Paragraphs 6 and 7 of the said communication dated 3rd December, 2021 require to be quoted:

“6. That all In-Charges of Police Stations and In-Charges of other Investigating Units under Siliguri Police Commissionerate have been directed to strictly comply with and ensure timely production of case diaries before the Hon'ble Court and maintain a close liaison with the office of Ld. APP at Hon'ble High Court Calcutta, Circuit Bench at

Jalpaiguri, vide this office Org No. 650/SPC/Legal Cell dated 02.12.2021.

7. That all zonal DCsP & ACsP under Siliguri Police Commissionerate have been directed to monitor the process of timely production of case diaries before the Hon'ble Court vide this office Org No. 650/SPC/Legal Cell dated 02.12.2021."

In addition, a message has been issued on the basis of the Memo dated 2nd December, 2021 to all police stations, which is also produced.

Both the communication dated 3rd December, 2021 and the message be retained with the record.

It is expected that henceforth all police stations, monitoring Deputy Commissioners of Police, the Assistant Commissioners of Police and the Inspectors-in-Charge of all police stations under Siliguri Police Commissionerate shall ensure smooth functioning in terms of the Memo dated 2nd December, 2021 (*supra*).

The Learned Additional Public Prosecutor, Circuit Bench at Jalpaiguri shall bring to the notice of the superior police authority any violation of the Memo dated 2nd December, 2021 in any case henceforth to be listed before the Hon'ble Circuit Bench.

The personal appearance of the Commissioner of Police, Siliguri Police Commissionerate stands dispensed with.

Later:

CRM 1005 of 2021

The application, being CRM 1005 of 2021 is next taken up on merits.

Learned Advocate for the petitioners submits that the petitioners are in custody since 22.4.2020. Although the case has already been committed to the Court of Sessions, but charge is yet to be framed. Additionally, Learned Advocate points out to the loopholes in the prosecution case stating that the seizure, so far as the knife is concerned, is absolutely against the parameters of law. Further, the recovery of iron rod was after the period of 14 days which grossly dilutes the prosecution case and as such, the petitioners may be released on bail on any condition.

Mr. Ganguly, Learned Advocate appearing for the State, draws the attention of this Court to the chain of circumstances particularly the mobile phone which belonged to the deceased and which was recovered from a person to whom it was mortgaged. The IEMI number which reflects that the mobile belonged to the deceased and it was used by one of the accused persons. Records also reveal that the concerned authorities have certified according to Section 65B of the Indian Evidence Act.

Prima facie, on an appreciation of the materials on record, we are of the view that there are incriminating materials appearing against the present petitioners and the manner/nature of the offences do not inspire us to release the petitioners on bail at this stage. As such, the prayer for bail of the petitioners is **rejected**.

The Investigating Officer of the case and Inspector-in-Charge of Bhaktinagar P.S. are present in Court. Their personal appearance stands dispensed with.

All parties shall act on the server copy of this order, duly obtained from the official website of the Hon'ble High Court Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

(Subrata Talukdar, J.)