

CRM (DB) 6 of 2022
(via video conference)

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

And

In Re : Akshay Biswas

.....Petitioner

Mr. Sourav Chatterjee
Mr. Amanul Islam

.....for the Petitioner

Mr. Mainak Gupta

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Domkal P.S. Case No. 29/2020 dated 12.01.2020 under Sections 302/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

Mr. Chatterjee, learned lawyer for the petitioner submitted that charge sheet in this case has been filed and the petitioner is in custody for more than 200 days. No recovery of any offensive weapon or incriminating article is made from the present petitioner. One of the co-accused, namely, Ripon Mondal, from whom incriminating motor-bike has been seized, is granted bail by a co-ordinate Bench of this Court but no such incriminating elements are recovered from the present petitioner. Therefore, Mr. Chatterjee prays for enlarging the present petitioner on bail.

Per contra, Mr. Gupta, learned lawyer appearing for the State submitted that the present petitioner had been absconding

even after filing of the charge sheet. He was arrested and kept in custody. He candidly submitted that no incriminating material has been recovered from the possession of the present petitioner. He submitted that period of detention of the other co-accused granted bail and the present petitioner is different.

Inviting our attention to the statements of witnesses, he strongly opposed the bail on the ground that the present petitioner is one of the perpetrators of the crime as alleged.

We have heard the rival submissions and perused the case diary.

The statements of the witnesses contain the name of the present petitioner as a member of the assailant group. However, nothing is recovered from the present petitioner. It also appears that one motor-bike was recovered from one of the co-accused. More than five persons were there who attacked the victim with two motor-bikes. However, another motor-bike is un-recovered although charge sheet has been filed. No offending weapon is recovered from the present petitioner. A co-accused more closely associated with the perpetration of the alleged offence and associated with recovery of incriminating article is on bail.

On perusal of the case diary and other materials and considering the incriminating materials, the extent of the petitioner's complicity and the period of custodial detention, we are of the opinion that the petitioner may be enlarged on bail.

Accordingly, we allow this application and direct that the petitioner, namely, **Akshay Biswas**, shall be released on bail upon furnishing a bond of Rs.20,000/-, with two sureties of like

amount each, one of whom must be a local, to the satisfaction of the learned Chief Judicial Magistrate, Murshidabad at Berhampore with further condition that the petitioner shall not leave the jurisdiction of Karimpur Police Station without prior permission of the concerned Inspector-in-Charge until further orders except for the purpose of attending the Court.

The petitioner shall attend the learned Court below on all the dates, as specified for hearing and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM (DB) 6 of 2022, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)