

CRM (DB) 16 of 2022

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 03.01.2022 in connection with Kaliachak P.S. Case No. 699 of 2021 dated 06.07.2021 under Sections 364(A)/365/302/34 of the Indian Penal Code.

-And-

In the matter of : Md. Sahadat Ali

... ...Petitioner

Mr. Milon Mukherjee, Sr. Advocate
Mr. Sandipan Ganguly, Advocate
Mr. Mrityunjay Chatterjee, Advocate

... ... For the Petitioner

Mr. Saibal Bapuli, Id. APP
Mr. Bibaswan Bhattacharya, Advocate

... ...For the State

Petitioner prays for bail on the ground of parity with that of the co-accused Samim Sk. who was granted bail on December 30, 2021 passed in CRM 9058 of 2021.

Learned Senior Advocate appearing for the petitioner submits that four persons were named in the statement recorded under Section 164 of the Code of Criminal Procedure of the wife of the victim. He submits that two of the persons named in such statement were not charge-sheeted in the sense that they were not named in the charge-sheet filed by the police. One of the other co-accused Samim Sk. was granted bail by the Coordinate Bench on December 30, 2021 in CRM 9058 of 2021. He submits that the petitioner stands in the same footing as that of co-accused Samim Sk who was granted bail by the Coordinate Bench. The petitioner is also standing in the same footing as that of the two persons named in the statement recorded under Section 164 of the Code of Criminal Procedure, namely,

Ismail and Bulla. Consequently, the petitioner is entitled to bail.

Learned Advocate appearing for the State refers to the statement of the wife of the victim recorded under Section 164 of the Code of Criminal Procedure. He submits that the petitioner herein cannot claim parity with that of the co-accused Samim Sk. who was enlarged on bail by the Coordinate Bench. He submits that the dead body was recovered from the house of the petitioner and offending weapon was also recovered on the leading statement made by the petitioner. He refers to the postmortem report. He states that the death was due to ligature strangulation and homicidal in nature.

Learned Senior Advocate appearing for the petitioner in reply submits that the postmortem report notes that the hyoid was intact. Therefore, the death cannot be said to be homicidal in nature. He points out that the recovery was made on the joint statement of Samim Sk. who was enlarged on bail by the Coordinate Bench.

The postmortem report as on date is inconclusive with regard to the cause of death.

Considering the materials in the case diary including the statement recorded under Sections 161 and 164 of the Code of Criminal Procedure of the wife of the victim it appears that Samim Sk. Was named by her as also the petitioner herein. The only distinction in the statement recorded under Section 164 of the Code of Criminal Procedure between Samim Sk. who was granted bail by the Coordinate Bench and the petitioner is that the dead body of the victim was recovered from the house belonging to the petitioner.

It is contended on behalf of the petitioner that the house belongs to two other brothers of the petitioner also. Such brothers are Ismail and Bulla who were not named in the charge-sheet. Therefore, on a parity of reasoning the

police cannot sustain a case of any distinction as against the petitioner with that of Samim Sk. since the police left out the two other owners of the property from where the dead body of the victim was recovered.

In the factual background as discussed above and considering the fact that the co-accused Samim Sk. was granted bail by the Coordinate Bench, we are inclined to grant bail to petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Malda, subject to condition that the petitioner shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

In the event, the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel the bail of the petitioner in accordance with law without further reference to this Court.

The prayer for bail is allowed.

CRM (DB) 16 of 2022 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)