

18.02.2022
Court No.32
Item No. 14
Avijit Mitra

C.R.M. (DB) No.50 of 2022

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

And

In Re : Samsul Hoque @ Pintu

Petitioner

Mr. Sabir Ahmed,
Mr. Ali Ahsan Alamgir,
Ms. Riya Das,
Ms. Rabiya Khatun,

For the Petitioner

Mr. Swapan Banerjee,
Ms. Purnima Ghosh

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Lalgola Police Station Case No. 48 of 2021 dated 01.02.2021 under section 302 of the Indian Penal Code.

Mr. Ahmed, learned advocate appearing for the petitioner submits that the entire case is based upon circumstantial evidence. The alleged incident occurred on 1st February, 2021 and immediately thereafter, the statements of the witnesses were recorded under Section 161 of the Code. The statements of the brother and mother of the victim were recorded under Section 164 of the Code about eight months thereafter. The statements made under Section 161 of the Code do not corroborate the statements of the same persons as recorded under Section 164 of the Code. He further submits that the petitioner has been falsely implicated and roped in on the basis of mere suspicion. Upon completion of

investigation chargesheet has also been submitted and as such further detention of the petitioner, who is in custody for about 118 days may not be necessary and he may be enlarged on bail on any stringent condition more so when, the petitioner is having a family and there is no possibility that he would flee from justice or delay the trial by abscondence.

Mr. Banerjee, the learned advocate appearing for the State has drawn our attention to the statement of the witnesses as recorded under Sections 161 and 164 of the Code as well as the seizure list and the *post-mortem* report. He further submits that the petitioner has a direct involvement of the alleged offence and he has criminal antecedent.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

Prima facie, it appears that there are inconsistencies between the statements of the witnesses as recorded under Section 161 of the Code and their statements as recorded under Section 164 of the Code about eight months thereafter. Considering the nature of accusations, the period of detention already suffered by the petitioner and the possible extent of complicity of the petitioner, we are of the opinion that his further detention is not necessary. However, his movement needs to be restricted.

Accordingly, we allow this application and direct that the petitioner, namely, **Samsul Hoque @ Pintu**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be a local, to the satisfaction

of the learned Chief Judicial Magistrate, Lalbagh, Murshidabad, with a further condition that the petitioner shall not enter the jurisdiction of Lalgola Police Station until further orders. He shall intimate the address where he would be residing to the Officer-in-Charge of Lalgola Police Station immediately.

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

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.

Accordingly, the application for bail, being CRM (DB) No.50 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)