

CRR 830 of 2022

In

CRM (A) 1156 of 2022

In re : An Application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 04.03.2022 in connection with Kushmandi Police Station Case No. 01 of 2022 dated 01.01.2022 under Sections 498A/302/34 of the Indian Penal Code.

-And-

In the matter of : **Golam Ali**

... ..Petitioner

Mr. Mazahar Hossain Chowdhury, Advocate

Mr. Mobashshara Alam, Advocate

... .. For the Petitioner

Mr. Debabrata Chatterjee, Advocate

Ms. Mausumi Sarkar, Advocate

... .. For the State

CRR 830 of 2022 and CRM (A) 1156 of 2022 are taken for analogous hearing as they emanate out of the same police case.

In CRM (A) 1156 of 2022 the petitioner seeks anticipatory bail on the ground of parity that all other co-accuseds were granted anticipatory bail by this Hon'ble Court. While considering such prayer, the case diary was considered on the previous occasion. On consideration of the case diary, we were of the view that essential materials in the case diary were not considered while granting anticipatory bail to the other two co-accused earlier. Consequently, by the order dated March 11, 2022, a Rule was issued upon the persons in CRM (A) 334 of 2022.

Learned Advocate appearing for the two co-accused who were granted anticipatory bail on January 27, 2022 submits that the same materials as obtaining in the case diary were considered by this Hon'ble Court while granting the prayer for anticipatory bail on January 27, 2022. He submits that the Court should not take a different view. Moreover, he highlights that one of the co-accuseds is aged about 62 years and the other is a lady with a baby.

Learned Advocate appearing for the State draws the attention of the Court to the materials in the case diary. He submits that the death was due to manual strangulation. There

was overwhelming evidence in the case diary of the complicity of the co-accused before this Hon'ble Court. He refers to the statement recorded under Section 161 of the Code of Criminal Procedure. He submits that the investigations are yet to be concluded. He refers to the statement recorded under Section 161 of the Code of Criminal Procedure of the witnesses where, such statements record that the victim was tortured by the in-laws when she was returning from her paternal house.

The materials in the case diary including the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure implicates all the three co-accuseds who are before this Hon'ble Court. They stand on the same footing. The issue is whether the Court overlooked substantial materials in the case diary while granting anticipatory bail to all the co-accused on January 27, 2022 or not. In the order dated January 27, 2022, the anticipatory bail was granted to the co-accuseds on the consideration of the gravity of the offence and the involvement of the petitioners therein as transpiring from the materials in the case diary.

The case diary was produced before us on March 11, 2022 in connection with CRM (A) 1156 of 2022. The State is being represented by a different Advocate in CRM (A) 334 of 2022. He highlights various aspects in the case diary which prompted us to issue Rule on March 11, 2022.

As noted above, all the three accused stand on the same footing. There are materials in the case diary which implicates all the three co-accused in the incident. The investigations are yet to be concluded. The investigations are inter alia under Section 302 of the Indian Penal Code. The postmortem report states that the death was due to manual strangulation.

In view of the investigations not being concluded as of not, the question of enlarging of the three accused on anticipatory bail would be improper. Consequently, we are of the view that the order granting the anticipatory bail to the two co-accused passed on January 27, 2022 in CRM (A) 334 of 2022 should be recalled. We recall the order of January 27, 2022 passed in CRM (A) 334 of 2022 and treat CRM (A) 334 of 2022 as on day's list and proceed to deal with the same.

Learned Advocate appearing for the petitioners in CRM (A) 334 of 2022 and CRM (A) 1156 of 2022 submits that none of

the petitioners are complicit in the incident. He submits that of the two petitioners in CRM (A) 334 of 2020, one is of advanced age of 62 years and the other is a lady with a child. So far as the petitioner in CRM (A) 1156 of 2022 is concerned, he is the brother-in-law of the victim. According to him all the petitioners were falsely implicated.

At the risk of repetition, the materials in the case diary speak otherwise of the three petitioners before Court. They are implicated in the various statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure. They stand on the same footing. Therefore, considering the gravity of the offence and considering the fact that the investigations are yet to be concluded and considering the involvement of the petitioners as transpiring from the case diary, we are unable to grant anticipatory bail to any of the petitioners.

Consequently, the prayer for anticipatory bail of the petitioners in CRM (A) 334 of 2022 and CRM (A) 1156 of 2022 are rejected.

In view of the order dated January 27, 2022 passed in CRM (A) 334 of 2022 being recalled, and since we are informed that the two petitioners therein already acted in terms of such order and obtained bail from the jurisdictional Court, it would be appropriate to direct the jurisdictional Court granting bail to the two petitioners in CRM (A) 334 of 2022 to ask the sureties to produce the two petitioners before the Court for appropriate orders.

CRR 830 of 2022 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)