

01.04.2022

Court No.29
Item No.42
(ALLOWED)

Saswata

CRM (DB) 814 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Baghmundi Police Station Case No. 14 of 2022 dated 25.02.2022 under Sections 302/34 of the Indian Penal Code.;

And

In the matter of : **Rinku Mandal & Anr.**

...Petitioners

Ms. Sutapa Sanyal
Mr. Diptimoy Talukder

...For the Petitioners

Mr. Neguive Ahmed, Ld. APP
Ms. Trina Mitra

...For the State.

Two petitioners are before Court seeking bail.

The petitioners before us are constables of Excise Department. They were arrested on 10/03/2022 in relation to an unnatural death of a person who, the Excise Department took into custody on 16/02/2022. The victim died on 18/02/2022.

Learned advocate appearing for the petitioners submits that the petitioners are similarly situated as the officer of Excise Department who were granted anticipatory bail by this Court on 11/03/2022 in CRM (A) 1201 of 2022.

Learned Additional Public Prosecutor appearing for the State invites the Court to appreciate the materials in the case diary without referring to the earlier order of anticipatory bail. He refers to the post mortem report. He submits that the autopsy surgeon opined that the injuries were inflicted later than 16/02/2022. He draws the attention of the Court to the statement of the eyewitness recorded under Section 164 of the Cr.P.C., where such eyewitness narrates that the victim was

assaulted at the time of being taken into custody. Consequently, he submits that the petitioners are involved in the incident. The investigations are yet to be over and none of the petitioners should be enlarged on bail.

The police case involves death of a victim in custody.

In such light, and on the contention of the rival parties, the case diary is considered.

On perusal of the case diary, we find that the Excise Department took custody of the victim in the early morning of 16/02/2022. The Excise Department prepared an inspection memo under the signature of Officer-in-Charge of Excise Department, Purulia, West Bengal on 16/02/2022, itself with no injury being found at the time of arrest, noted therein. Such inspection memo is attested by the medical officer. The custody of the victim was made over to the police on 16/02/2022, itself, as will appear from the noting in the accused challan of the Officer-in-Charge of Jhalda Circle, Purulia Sadar Court.

The victim was produced before the Jurisdictional Magistrate on 16/02/2022 itself. A petition was filed on behalf of the victim, praying for bail which was considered by the Jurisdictional Magistrate on 16/02/2022.

The Jurisdictional Magistrate considering the materials in the case diary and the gravity of offence was pleased to reject the prayer for bail of the victim. The Jurisdictional Magistrate remanded the victim to judicial custody till 18/02/2022 and fixed 18/02/2022 for production of the victim.

The victim in judicial custody was removed to the District

Hospital on 17/02/2022 at about 2.00 P.M., as would appear from the noting of the Sadar Hospital. The doctor attending the victim at the hospital directed admission of the victim. The victim was examined at about 7.00 P.M. on 17/02/2022 by the doctor at the Sadar Hospital. The noting by the doctor is that the victim was referred from the correctional home with a case of alcohol withdrawal system and hypertension. The doctor advised various medicines to the victim. There are notings in the bed ticket of the victim on 18/02/2022 in the morning and in the evening. There is a noting in the bed ticket on 18/02/2022 at about 7.30 P.M. where it is recorded that the case was discussed with a person. The noting also states that the victim obtained bail on 18/02/2022. The victim was directed to be shifted in the male medicine ward.

On 18/02/2022, there is an order by the learned Magistrate granting bail to the petitioner.

The victim was in the hospital till 20/02/2022, where he expired. The postmortem was undertaken. A postmortem report states that the death was due to the effects of the ante mortem injuries of brain as noted in the injury column of the report. However, it continues to state that further information, if any, might be given after the receipt of the Chemical Examination Report. The injury column in the postmortem report contains about 19 injuries being suffered by the victim.

The case dairy contains health examination report of the victim at the time of custody, i.e., 16/02/2022. The medical officer preparing such report notes that there was no physical assault or external injury noted on the body of the victim on 16/02/2022.

The Excise officer approached this Hon'ble Court for anticipatory bail in CRM (A) 1201 of 2022 which was allowed on 11/03/2022.

While allowing such application for anticipatory bail, the Court noted the statement of the doctor conducting the postmortem report that the injuries noted in the body of the victim were not prior to 16/02/2022. In such context, the Court was of the view that the prima facie materials suggested that there was hardly any proximity between the incident alleged and the Excise officer, seeking anticipatory bail and proceeded to grant anticipatory bail to such person.

The petitioners herein are similarly placed as that of the person, who was granted anticipatory bail by this Court on 11/03/2022. The Excise Department made over custody of the deceased to the police on 16/02/2022 early in the morning with at least 3 notings by 3 different persons that the victim did not exhibit any external injury or that there was no sign of physical assault.

In such circumstances, considering the period of detention of the petitioners and considering the involvement of the petitioners in the incident, we deem it appropriate to enlarge the petitioners on bail.

The prayer for bail is thus allowed.

Accordingly, the petitioners be released on bail upon furnishing a Bond of Rs. 10,000/-, each with two sureties of like amount each one of whom must be local, to the satisfaction of the Learned Chief Judicial Magistrate, Purulia, subject to the condition that during bail the petitioners shall appear before the Investigating Officer once in a fortnight till conclusion of the investigation and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioners fail to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail being CRM (DB) 814 of 2022 is, thus, disposed of.

(Debangsu Basak, J.)

(Bibahas Ranjan De, J.)