

11.08.2022.
07.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 1865 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Chapra P.S. Case No.206 of 2021 dated 14.05.2021 under Sections 341/325/307/354B/34 of the Indian Penal Code and added Section 302 of the Indian Penal Code.

In the matter of : Apu Mondal.

....Petitioner.

Mr. Prabir Kr. Mitra,
Mr. Avisek Chatterjee.

...for the Petitioner.

Mr. Samrat Goswami,
Mr. Sunil Gupta.

...for the CBI.

Heard the learned Advocates appearing for the parties.

Learned Advocate appearing for the petitioner submits he was not named in the first information report. He has been subsequently implicated in the case. Co-accuseds have been granted pre-arrest bail.

Learned Advocate for the CBI opposes the prayer for bail. He submits statements of eye witnesses recorded under Sections 164/161 of the Code of Criminal Procedure show the role of the petitioner in the crime. Bail prayer of co-accuseds similarly circumstanced with the petitioner was turned down by a co-ordinate Bench of this Court. Order of anticipatory bail passed in favour of other accuseds have been assailed before the Hon'ble Apex Court in Slp (Crl.) No.05992 of 2022.

We have considered the materials on record. Though petitioner is not named in the FIR, his role in the crime transpires from the statements of eye witnesses viz., Purnima

Mondal (wife of the deceased), Aradhana Mondal (sister-in-law of the deceased), Sanjit Mondal, Subrata Biswas, Bina Biswas, Sujata Mondal, Nepal Mondal, Chaina Mondal and Samir Mondal. Hence, there are overwhelming evidence of eye witnesses who stated petitioner was a member of an unlawful assembly who had come to the spot armed with various weapons and had played active role in the offence.

Learned Advocate strenuously argued that petitioner be released on bail on principle of parity as co-accuseds had been granted pre-arrest bail in CRM 5928 of 2021. Apart from the fact that the said order is sub-judice before the Hon'ble Supreme Court, we note another co-ordinate Bench in CRM 8969 of 2021 was pleased to reject the prayer for bail of other accused persons. Taking into note the order of anticipatory bail in CRM 5928 of 2021 this Bench in CRM (DB) 2455 of 2022 also was not inclined to enlarge co-accseds on bail.

In the order granting pre-arrest bail in CRM 5928 of 2021, no proposition of law having binding force was laid down. No doubt equal treatment to co-accuseds similarly circumstanced in a particular case stems from the principle of equality enshrined under Article 14 of the Constitution of India.

However, as the order of pre-arrest bail is sub-judice before the Hon'ble Apex Court and co-ordinate Benches have taken different view with regard to the gravity and impact of the accusation, we are of the considered view principle of parity does not apply in the facts and circumstances of the case.

In the light of the aforesaid discussion, gravity of the offence and the incriminating materials as noted above collected against the petitioner, we are not inclined to grant bail to him at this stage.

We are further persuaded to take such a course of action as the prosecuting agency assured us that they are ready and willing to commence the trial.

Under such circumstances, trial court is requested to take prompt steps for consideration of the issue of framing of charge at the earliest and in the event charge is framed to take the proceeding to its logical conclusion without granting unnecessary adjournment to either of the parties.

Accordingly, the prayer for bail of the petitioner is rejected.

(Ananya Bandyopadhyay,J.)

(Joymalya Bagchi, J.)