

29.06.2022

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Ct. No. 29

KAUSHIK

Partly

Allowed

C.R.M.(A) 3033 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Asansol (South)** Police Station Case No. **318** of **2020** dated **06.10.2020** under Sections 302/506/34 of the Indian Penal Code, 1860.

And

In Re : Md. Shamshad Hussain @ Raja @ Anr.

..... petitioners

Mr. Sekhar Basu

Mr. Avik Ghatak

Mr. Sagnik Mukherjee

....for the petitioners

Mr. Madhusudan Sur

Mr. Dipankar Pramanick

....for the State

Petitioners pray for anticipatory bail.

Learned senior advocate appearing for the petitioners submits that, there is a stay of the order of the proclamation and attachment till July 12, 2022 passed by the Revisional Court on June 17, 2022 in CRR 449 of 2022. He submits, therefore, that the present application for anticipatory bail is maintainable.

Learned senior advocate for the petitioner refers to the order dated December 6, 2021 passed in CRM 4977 of 2021 and submits that, another co-accused was enlarged on bail by

the Co-ordinate Bench. He refers to the contents of such order. He submits that, the cause of death was noted for strangulation. He noted the First Information Report and submits that, there is a case of assault. He refers to the subsequent order of the Co-ordinate Bench of January 6, 2022 passed in CRM 8874 of 2021 enlarging other co-accuseds on bail. He submits that, there is a further complaint lodged at the behest of the wife of the deceased. The deceased was initially buried without post mortem being conducted. Post mortem was conducted subsequent to complaint lodged at the behest of the father-in-law of the deceased.

Learned advocate appearing for the State draws the attention of the Court to the statement of a eye witness recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.) and to the materials in the case diary including the post mortem report.

The post mortem report of the victim contends description of injuries that the victim suffered.

The 164 Cr.P.C. statement of the eye witness depicts it is a case of assault of the deceased including the first petitioner holding the deceased from behind in a manner which suggest strangulation.

In such circumstances, we are unable to grant anticipatory bail to the petitioner no. 1 (Md. Shamshad Hussain @ Raja).

Accordingly, the application for anticipatory bail is, thus, rejected so far as petitioner no. 1 is concerned.

So far as the petitioner no. 2 is concerned, on the parity of the reasoning of the Coordinate Bench granting bail to Md. Naushad Hussain @ Mungary @ Mungari on December 6, 2021 passed in CRM 4977 of 2021, we grant anticipatory bail to the petitioner no. 2 (Md. Aftab Hussain @ Minu).

Accordingly, we direct that in the event of arrest the petitioner no. 2 shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on condition that the petitioner no. 2 shall appear every date before the jurisdictional Court on and from the date fixed for appearance of the accused and in default the jurisdictional Court will pass appropriate order to secure the presence of the petitioner no. 2 in Court including cancelling the anticipatory bail granted without further reference to this Court.

This application for anticipatory bail is, thus, partly allowed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

