

09.03.2022
Court No.32
Item No.138
Avijit Mitra

C.R.M. No.8905 of 2021

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Kotwali Police Station Case No. 562 of 2021 dated 14.06.2021 under sections 448/302/427/34 of the Indian Penal Code and 25/27 Arms Act.

And

In Re : Babusona Mukherjee @ Apu

Petitioner

Ms. Minoti Gomes,
Mr. Amanul Islam,
Mr. Sourav Mukherjee

For the petitioner

Mr. Phiroze Edulji,
Mr. Samrat Goswami

For the C.B.I

Ms. Gomes, learned lawyer representing the petitioner submitted that the present petitioner is in custody for about 237 days. He was not present on the spot and on the basis of suspicion he was arrested as being related to one of the principal assailants. She further submitted that the victim himself was an offender in the locality. Since chargesheet has been filed, further custodial detention is not necessary. Accordingly, she prayed for bail on any stringent condition.

Per contra, Mr. Edulji, Learned Lawyer representing the C.B.I. submitted that there are strong incriminating elements against the present petitioner inasmuch as he was present on the spot and was part of the unlawful assembly, being armed with offensive weapon. He further submitted that bail of other accused was

refused by this Court. Since strong incriminating elements are there against the present petitioner and since the offence is very grave and serious, witnesses may be won over before trial. Therefore, he strongly opposed the bail.

We have heard the rival submissions and perused the case diary. It appears that bail of co-accused Ananda Sarkar was refused by a Coordinate Bench of this Court on 21.02.2022 being C.R.M. No.410 of 2022. On perusal of statement of the witnesses, it *prima facie* appears that the instant petitioner was present on the spot armed with lathi and iron rod and assaulted the victim inside his house although such blows were not fatal as the victim died of gun-shot injury. Ananda Sarkar is on different footing from the present petitioner. The allegations are grave and serious and there is possibility of influencing witnesses. Therefore, we are not inclined to allow the bail application.

Accordingly, the application for bail, being CRM No.8905 of 2021, is dismissed.

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)