

16.09.2022.
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as
(Allowed)

C.R.M. (DB) 3142 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.329 of 2022 dated 01.06.2022 under Sections 448/326/307/34 of the Indian Penal Code and adding Section 302 of the Indian Penal Code and charge sheet submitted under Sections 448/302/34 of the Indian Penal Code.

In the matter of : Madhu Mondal @ Mamtaj & Anr.
.... Petitioners.

Mr. Prabir Majumder,
Mr. Snehansu Majumder.
...for the Petitioners.

Ms. Zareen N. Khan,
Mr. Arup Kr. Sarkar.
...for the State.

Learned Advocate for the petitioners submits they are in custody for 107 days. It is contended victim suffered accidental burn. This fact is stated in the medical records at Chapra BPHC as well as at the district hospital Nadia. It is further submitted the incriminating dying declaration recorded subsequently in the hospital is inconsistent with the statement of the daughter of the victim lady with regard to the manner and circumstances in which the incident occurred. While in the dying declaration it is stated that the victim was cooking when the petitioners set her on fire, her daughter in her statement said she was sleeping with her mother when the incident occurred.

Learned Advocate for the State opposes the prayer for bail. She submits dying declaration recorded in the hospital implicates the petitioners. Presence of the petitioners were noted by the daughter of the deceased. Bottle of kerosene oil was seized from the place of occurrence.

We have considered the materials on record. Earlier statements with regard to the history of the incident disclose a case of accidental burn. Subsequent statement of the victim lady implicates the petitioners in the crime. Ordinarily, we would have relied on the said statement at the stage of consideration of bail. However, statement of daughter of the victim while corroborating the allegations portray a different set of circumstances leading to the crime. In the dying declaration victim stated she was cooking while the petitioners set her on fire. But her daughter claimed she was sleeping beside her when she woke hearing cries from her mother and saw the petitioners run away. These contradictory circumstances coming from the incriminating dying declaration and the statement of the minor require to be assessed in the light of the exonerative statements noted at Chapra BPHC and Nadia Hospital during trial.

Keeping in mind the aforesaid conflicting issues and as investigation is complete, we are inclined to grant bail to the petitioners.

Accordingly, the petitioners shall 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, Nadia at Krishnanagar subject to condition that they shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioners fail to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

The application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)