

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

12.05.2022
Court No.01
Item No.37
Avijit Mitra

CRM (DB) 131 of 2022

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;

And

In Re: Bhanu Rai

...Petitioner

Mr. Arnab Saha,
Mr. Sudhindra Das

....For the petitioner

Mr. Ujjwal Luksom,
Mr. Sourav Ganguly

...For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Kurseong Police Station Case No.135 of 2020 dated 3rd November, 2020 under Sections 326/307/34 of the Indian Penal Code.

Mr. Saha, the learned advocate appearing for the petitioner submits that there was a dispute between the neighbours and the incident occurred on the spur of the moment. The principal accused is one Bhim Rai, who has already been granted bail by a Coordinate Bench of this Court on 26th August, 2020. Upon completion of investigation chargesheet has been filed and as such, further detention of the petitioner, who had already suffered long incarceration for about 1 year 6 months, may not be necessary and he may be enlarged on bail on any stringent condition. Out of total 17 witnesses,

only 6 witnesses have been examined and as such there is no possibility towards conclusion of the trial in the near future.

Mr. Saha in support of his contention has drawn our attention to the deposition of the injured witness, namely, Bikash Sarki and others. Let the said deposition copy of the injured, as produced, be kept on record.

Mr. Luksom, the learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the statement of the witnesses including that of Bikash Sarki as recorded under Section 161 of the Code. He submits that there are strong incriminating materials against the petitioner and as such he is not entitled to the relief as prayed for more so when, the victim's right wrist got amputated.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

From the deposition of the injured, it *prima facie* appears that Bhim Rai assaulted him. While deposing the injured, namely, Bikash Sarki had *inter alia* stated as follows :

"As soon as I saw him sent to Bhanu Rai and hit him with that wood stick. Bhim Rai suddenly assaulted me from behind on the back of my head. I put both of my hands/palms on the back of my head and that moment my right palm was chopped off witness shows the posture on putting his hand behind his head and his right hand without palm) he hit me behind my head on the upper part of neck (witness shows that around 4 inches long mark of injury on his neck). I was taken to Kurseong Hospital and thereafter referred to Siliguri Medical Hospital first thereafter paramount nursing home".

We have perused the materials on record including the deposition of Bikash Sarki and have assessed the role attributed to the petitioner. Considering the fact that the other co-accused, namely, Bhim Rai has been granted bail by a Coordinate Bench of this Court and as the petitioner has already suffered incarceration for about 1 year 6 months, we are of the opinion that further detention of the petitioner is not necessary more so when, there is hardly any possibility towards conclusion of the trial in the near future.

Accordingly, we allow this application and direct that the petitioner, namely, **Bhanu Rai**, shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional District and Sessions Judge, Kurseong.

The petitioner shall attend the learned Court below on all the dates as specified for hearing.

It is further directed that the petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

The application for bail, being C.R.M.(DB) 131 of 2022 is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Ajoy Kumar Mukherjee, J.) (Tapabrata Chakraborty, J.)