

15.03.2023
SI. No.16
akd
[ALLOWED]

C. R. M. (DB) 752 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 17.02.2023 in connection with Asansol North Police Station Case No.193 dated 29.04.2022 under Sections 395/412/363/368/342/120B/34 of the Indian Penal Code. (G.R. Case No.1418 of 2022)

And

In Re: ***Avinaw Dokania***

... .. Petitioner

Mr. Sandipan Ganguly .. Sr. Advocate
Mr. Karan Dudhwewala

... .. for the petitioner

Mr. Neguive Ahmed .. Id. Addl. Public Prosecutor
Ms. Trina Mitra

... .. for the State

Pursuant to our earlier direction, Investigating Officer is personally present before this court. His presence is noted and dispensed with.

Petitioner renews his prayer for bail. It is submitted on behalf of the petitioner that no Test Identification parade was conducted. Test Identification parade report incorporating name of the petitioner is a concocted one. No direction was given by the jurisdictional Magistrate to hold Test Identification parade of the petitioner. Recovery of the vehicle was also after a gap of ten days from his arrest and that too from a public place accessible to all.

Report with regard to the anomalies contended in the Test Identification parade is placed on record. From the report it appears on 18.05.2022 Test Identification parade was proposed to be held in respect of one Henry Robert Mahato @ Ajay. Test Identification parade was conducted by the judicial Magistrate, 4th Court, Asansol. In course of Test Identification parade of the petitioner and two other accuseds

viz. Mukesh Shrestha and Md. Tahirul Quadri were also put up for Test Identification parade. Report of the Magistrate shows they were identified by the identifying witness. Report states that the Test Identification parade of the petitioner and two other accuseds were at the behest of the jail authorities and not the Investigating Agency.

We are unable to understand how the jail authorities who are in no way connected with the investigation could suggest holding of Test Identification parade of an accused. This requires to be explained by the prosecution in course of trial. But the manner and circumstances in which the Test Identification parade of the petitioner is said to have been held creates a cloud of suspicion.

It is also relevant to note that the recovery purportedly made on the disclosure statement of the petitioner is after a lapse of ten days and that too from a public place. Even so, the recovery *per se* would not invariably lead to the inference that the petitioner was present at the time of dacoity.

Under such circumstances, we are of the opinion petitioner is entitled to be released on bail however, subject to strict conditions.

Therefore, the accused/petitioner, namely **Avinaw Dokania**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 1st Court, Asansol subject to condition that the said petitioner 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 and on further condition that the petitioner, while on bail, shall not leave the jurisdiction of the district of Paschim Bardhaman and report to the Inspector-in-charge, Jamuria Police Station once in a week until further orders.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail, thus, stands **allowed**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)