

14.03.2023
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Ct. No. 29
KAUSHIK
REJECTED
Rule Issued

C.R.M.(A) 1038 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Domkal** Police Station Case No. **762** of **2022** under Sections 448/325/326/307/427/379/506/34 of the Indian Penal Code, 1860.

And

In Re : Riju Pal & Ors.

..... petitioners

Mr. Kamalesh Bhattacharya

Mr. Aninda Bhattacharya

....for the petitioner

Mr. Joydeep Ray

Ms. Sujata Das

....for the State

Petitioners pray for anticipatory bail.

Learned advocate appearing for the petitioner submits that, co-accused was enlarged on bail and anticipatory bail. He relies upon Order No. 2 dated January 5, 2023 passed in Criminal Misc. Case No. 6922 of 2022 passed by the learned Sessions Judge, Murshidabad and submits that, learned Sessions Judge found that, the injuries sustained by the victim was not so grievous as to attract Section 307 or Section 326 of the Indian Penal Code, 1860. He submits that, the petitioners be enlarged on anticipatory bail.

Learned advocate appearing for the State draws the attention of the Court to the materials in the case diary including the photographs of the aftermath of the incident, the injury report of the victim and the statement of the victim

recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.).

The victim suffered multiple fractures.

The victim in his 164 Cr.P.C. statement implicates all the petitioners in the incident of assault. The victim states that, he was assaulted with iron rods and that he was assaulted repeatedly on his head. He suffered fracture injuries. His gold ornaments were also snatched. He names all the petitioners as being involved in such incident of assault.

A co-acused, Bhuban Pal @ Arup Kumar Pal was granted anticipatory bail by Order No. 2 dated January 5, 2023 passed in Criminal Misc. Case No. 6922 of 2022. While granting anticipatory bail to such co-accused, learned Sessions Judge considered the materials in the case diary and opined that, the injuries sustained by the victim were not so grievous so as to attract Sections 307/326 of the Indian Penal Code, 1860.

We, however, are of a different view. There are multiple fractures suffered by the victim. The victim stated that, he was assaulted by iron rod repeatedly on his head. He, in fact, sustained injuries on his head also. Therefore, at this stage, to discount the possibility of Sections 307 and 326 of the Indian Penal Code, 1860 to be attracted to the facts of the case would be improper. Consequently, we issue suo motu Rule as against Bhuban Pal @ Arup Kumar Pal, who was granted anticipatory bail by the Order No. 2 dated January 5, 2023 passed in Criminal Misc. Case No. 6922 of 2022.

The Rule is made returnable on March 31, 2023.

So far as the present petitioners are concerned, considering the gravity of the offence and the involvement of the petitioners in the incident, we are unable to grant anticipatory bail to the petitioner.

Accordingly, prayer for anticipatory bail of the petitioner is rejected and the application being CRM (A) 1038 of 2023 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)