

26.04.2023.
24.
Ct.No.28
as
(Allowed)

C.R.M. (DB) 1577 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Pukhuria P. S. Case No.150 of 2018 dated 06.05.2018 under Sections 364/302/201/120B of the Indian Penal Code read with Section 27 of the Arms Act and Section 9(b) of the Indian Explosive Act, 1884.

In the matter of : Alauddin @ Bura.

.... Petitioner.

Mr. Milon Mukherjee, Id. Sr. Adv.,
Mr. Avinaba Patra,
Mr. Dipanjan Kundu.

...for the Petitioner.

Mr. Rudradipta Nandy, Id. A.P.P.,
Mrs. Sonali Das.

...for the State.

Petitioner is in custody for three and half years. He submits there is delay in trial. He also submits co-accused Jahiruddin @ Babua has been enlarged on bail by the Hon'ble Apex Court. He prays for bail.

Learned Additional Public Prosecutor opposes the bail prayer. Petitioner does not stand on the same footing with Jahiruddin @ Babua. He had disposed of the dead body. Delay in the matter is on the score of transfer of investigation to Special Investigation Team (SIT) and abscondence of co-accused.

We have considered the materials on record. Victim Nayan Mondal was attacked by a number of persons with bombs and fire arms. As a result, he succumbed to injuries. FIR was initially registered against nine accused. Subsequently, it came to light that the first information report

had been registered under threat and could not disclose correct state of affairs.

Under such circumstances, a co-ordinate Bench of this Court transferred the investigation to a Special Investigation Team. Investigation revealed the role of Jahiruddin @ Babua and the petitioner. Statement recorded under Section 164 of the Code of Criminal Procedure states that Jahiruddin @ Babua and the petitioner were seen carrying the body of the victim. No doubt, these materials are compelling and show complicity of the petitioner. However, co-accused Jahiruddin @ Babua has been enlarged on bail by the Hon'ble Apex Court. Though petitioner is older than Jahiruddin @ Babua, his culpability appears to be on par with the said co-accused. There is also no possibility of trial commencing in near future.

Under such circumstances, we are of the opinion further detention of the petitioner is unwarranted and he may be released on bail subject to strict conditions.

Accordingly, the petitioner Alauddin @ Bura 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 Chief Judicial Magistrate, Chanchal, Malda subject to condition that he 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 enter the District of Malda and shall provide the address where he shall

reside to the Investigating Officer as well as the court below and report to the Officer-in-charge of the Police Station concerned within whose jurisdiction he shall reside once in a week until further orders.

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

We note that the absconding accused have been declared as proclaimed offenders.

Under such circumstances, Magistrate shall file the case so far as the proclaimed offenders are concerned and commit the case to the Court of Sessions within seven days from the date of communication of this order.

Parties shall communicate this order to the trial court for due compliance.

The application for bail is, thus, disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)