

**20.06.2023**

Sl. 12

Court No.29

Suvayan

(Allowed)

**C.R.M. (DB) 2313 of 2023**

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Serampore** P. S. Case No. **192** dated **08.05.2023** under Sections **341/323/325/307/506/34** of the IPC added Section **302** of the IPC corresponding to G.R. case No. **1077 of 2023**.

And

In the matter of: **Gourab Ghosh & Anr.**

....petitioners

Mr. Sekhar Kumar Basu, Sr. Adv.

Mr. Milon Mukherjee, Sr. Adv.

Mr. Rana Mukherjee

Mr. Ujjwal Datta

Mr. Sanat Kumar Roy

Mr. Animesh Mukherjee

Mr. Snehatosh Majumdar

Mr. Kishore Mukherjee

Mr. Atanu Basu

Mr. Indranuj Dutta

Mr. D. Dutta

...for the petitioners.

Ms. Anasuya Sinha

Mr. Pinak Kumar Mitra

...for the State.

1. Heard the learned Counsel for both the parties.
2. Petitioner No. 1 is the son of the petitioner No. 2. Considered the materials placed by learned Counsel for the parties including the statement of the witnesses recorded under Sections 161 and 164 Cr.P.C. The case as unfolded before us from the police papers is to the effect that both the petitioners being the son and the father were talking about some property matters and at that time the deceased came there. Both the petitioners are alleged to have assaulted the deceased by kick and fist blows and thereafter petitioner No. 1 is alleged to have lifted the deceased and dashed him on the road causing the fatal injury on parietal region of his head.
3. From the medical examination report, we find that the deceased was on ventilator from 10<sup>th</sup> May, 2023. The

occurrence happened on 8<sup>th</sup> May, 2023 and the deceased succumbed to the injury on 19<sup>th</sup> May, 2023. From the medical examination report it is clear that the deceased was on continuous medical surveillance after the incident and the death has been caused after surgery.

4. The disquieting features in the case is that the eyewitnesses have testified about lifting of the deceased and dashing him on the ground by petitioner No. 1 in their statement under Section 161 Cr.P.C. except one none of the witness in their statement under Section 164 Cr.P.C. has stated such fact. The second such feature is that death having been done after surgical intervention, it cannot be opined at this stage without medical consultation whether the death was caused as a direct result of the injury as caused to the deceased by assault of the petitioners. Another such feature is that except the injury on parietal region of the head of the deceased there is no other external injury on any part of the dead body. From the aforesaid facts and circumstances two parallel conclusions emerges, i.e., (i) the deceased might have been done to death as have been alleged or (ii) he might have fallen down on the road during push and pull or by kick and fist blows by the petitioners. Be that as it may the investigation in the case have progressed substantially and charge-sheet is otherwise ready for filing. Both the petitioners are deep rooted in the society and there is no chance of their absconding or tampering with the evidence as almost all the material witnesses have already been examined under Section 164 Cr.P.C.

5. Regard being had to the facts and submissions in the case, factum of permanent residence of the petitioners, substantial progress in the investigation, it is directed that each of the petitioner shall be released on bail by the learned Additional Chief Judicial Magistrate, Serampore, Hooghly in G.R. Case No. 1077 of 2023 in connection with Serampore P.S. case No. 192 on such terms and conditions as deemed just and proper in the facts and circumstances of the present case including the conditions that i) each of the petitioner shall appear before the I.O. once in a fortnight till submission of Final Form; ii) They shall not leave West Bengal without obtaining prior permission of the Court in seisin over the matter. (Learned ACJM at the time of enquiry and the appropriate Sessions Court at the time of trial).
6. Our view expressed above is tentative in nature and learned Trial Court is requested not to be influenced by such.
7. The learned Trial Court is directed to act on the server copy of this order.
8. Accordingly, the prayer for bail of the petitioners are allowed.
9. CRM (DB) 2313 of 2023 is disposed of.

**(Chitta Ranjan Dash, J.)**

**(Partha Sarathi Sen, J.)**