

17.08.2023.
25.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 2611 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Branch Case No.RC0562021S0041 dated 21.09.2021 of CBI/SCB/Kolkata under Sections 143/144/147/148/149/302/34 of the Indian Penal Code arising out of Jhargram P.S. Case No.55 of 2021 dated 21.03.2021 under Sections 325/326/307/34 of the Indian Penal Code and adding Section 302 of the Indian Penal Code.

In the matter of : Swapan Kumar Paira.

... Petitioner.

Mr. Sabir Ahmed,
Mr. Bhaskar Hutait.

...for the Petitioner.

Mr. Arun Kr. Maiti (Mohanty),
Mr. Amajit De, Id. Spl. P.P.,
Mr. Manabendra Nath Bandyopadhyay.

...for the CBI

1. Petitioner is in custody for more than a year. It is contended victim suffered accidental death. Subsequently, it was portrayed it was a case of public lynching and petitioner had been falsely implicated. First Information Report is a manufactured document. It refers to Durga Soren, Tapan Paira, Rabindranath Giri, Kiranmoy Giri, Santu Giri and Tarak Sau as assailants who were either not present at the place of occurrence or were dead. Durga Soren had been murdered on the same day five hours ago. Rabindranath Giri, Kiranmoy Giri and Santu Giri were in Kolkata and have been discharged by the investigating agency itself. There is little possibility of trial concluding in the near future. He prays for bail.

2. Learned Advocate for CBI submits statements of eyewitnesses recorded under Section 164 of the Code of Criminal Procedure specifically named the petitioner as one of the assailants. Some of the witnesses particularly Swapnadip Barik @ Santu attributed specific overt act to the petitioner. Medical opinion rules out case of accidental death. Trial is in progress. Five witnesses have been examined.

3. In rebuttal, it is contended statements of the so-called eyewitnesses referred to one Durga Soren who admittedly died prior to the incident.

4. We have considered the rival submissions at the Bar. Firstly, it is contended death of the victim was due to a motor accident. Reference has been made to the entries in the admission register at the hospital. It may not be out of place to note that the instant case is a product of political rivalry. Possibility of false declaration to come up misdeeds cannot be ruled out. Moreover, investigating agency has clarified the position and obtained medical opinion which unequivocally states that death was due to assault and not an accidental one.

5. Secondly, it is contended some of the accused in the First Information Report have been discharged. It may not be out of place to note the said accused viz., Tapan Paira, Rabindranath Giri, Kiranmoy Giri and Santu Giri were not named by the witnesses where statements were recorded under Section 164 of the Code of Criminal Procedure. On the contrary, statements of eyewitnesses recorded under Section 164 of the Code of Criminal procedure clearly depicts the role

of the petitioner in the assault of the victim. Petitioner cannot claim parity with the said discharged accused. Specific overt act is attributed to the petitioner by one of the witnesses viz., Swapnadip Barik @ Santu. Unlike the petitioner no specific overt act has been attributed to Durga Soren by the witness.

6. Hence, we are of the view there are *prima facie* materials implicating the petitioner in the crime. Trial is in progress. It may not be advisable to release the petitioner on bail at this stage.

7. Hence, we are not inclined to grant bail to the petitioner.

8. Accordingly, the prayer for bail of the petitioner is rejected.

9. We have taken note of the fact that prosecution proposes to examine 92 witnesses. Prosecuting agency may be advised to streamline the number of witnesses so that the trial may be concluded at an early date. Trial Court is requested to conduct the trial on a day to day basis and conclude the same preferably within two years from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)