

23.08.2023

SL. 12

Court No. 29

Sourav/

Suvayan

(Allowed)

C.R.M. (A) 2958 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Pukhuria** Police Station Case No. **150** of **2018** dated **06.05.2018** under Sections **364/302/201/120(B)** IPC read with Section **27** of Arms Act along with Section **9(b)** of Indian Explosive Act (corresponding to G.R. Case No. **752** of **2018**, pending before the Ld. ACJM, Chanchal, Malda).

And

In the matter of: **Md. Mohabbat Ali @ Mohabbat Ali**
....petitioner.

Mr. Milon Mukherjee, Sr. Adv.
Mr. Avinaba Patra
...for the petitioner.

Mr. Saibal Bapuli, Ld. APP
Mr. Bibaswan Bhattacharya
... for the State.

Mr. Bikram Banerjee
Mr. Masud Mallik
Mr. Sagar Dey
... for the defacto complainant.

1. Heard learned Counsel for the parties.
2. The present case is peculiar in fact and also circuitous in course. The case is based entirely on circumstantial evidence. The three circumstances that appear against the present petitioner are as follows:

- i) the mother and brother of the deceased along with a co-villager have stated in their statement recorded under Section 164 Cr.P.C. that the present petitioner along with Washim Akram, Alauddin @ Bura and Jahiruddin @ Babua came to the house of the deceased on 05.05.2018 in the evening and took him with them;

- ii) the dead body of the deceased was found in the same night (10.30 p.m.) near a petrol pump with a gun shot injury;
- iii) there is statement of one Tajibur Sk recorded under Section 164 Cr.P.C. to the effect that two persons were found by him taking the dead body of the deceased in a motorcycle and dumping him at the spot from where the dead body was found. It is further stated by him that when he tried to proceed towards the spot to find out as to what has happened, he was prevented by the present petitioner and others.

3. All the statements have been recorded in between 2018 to 2020 before filing of charge-sheet by the police. Charge-sheet was filed by the police on 20.02.2020. in the said charge-sheet out of 26 persons against whom the investigation was started, 24 persons were not shown as accused in the charge-sheet and only two persons, namely, Jahiruddin @ Babua and Alauddin @ Bura were charge-sheeted.
4. Thereafter, on the basis of an order passed by this Court in a bail application, the matter was handed over to the SIT of CID and it is submitted by the learned Counsel for the informant now that another writ petition has been filed to direct the NIA to take up the investigation of the case which is still pending. Subsequent charge-sheet was filed on 05.07.2022 by SIT of CID implicating the present petitioner and another, namely, Washim Akram in the alleged offence on the basis of the

statement of one Khurshed Ali recorded under Section 161 Cr.P.C. on 26.11.2019 wherein he has stated that though he had seen the occurrence of murder of deceased Nayan Mondal, he was pressurized by the present petitioner and Washim Ali not to tell the truth before the police and the same is the version of the aforesaid witness in his statement recorded under Section 164 Cr.P.C. on 28.11.2019. But the aforesaid two statements of aforesaid Khurshed Ali was also there on record at the time of filing of charge-sheet by the police.

5. Almost five years have elapsed in the meantime from the date of incident and it is found that the case has not yet been committed for non-cooperation by the accused persons alleged to have committed the offence.
6. Learned Counsel for the State relies on a decision of this Court passed on 21.10.2022 in CRM (A) 4946 of 2022 in respect of Washim Akram (co-accused) in the supplementary charge-sheet dated 05.07.2022 whose prayer for anticipatory bail has been rejected and such order was not interfered by the Hon'ble Supreme Court in SLP (Crl.) No. 8581 of 2023.
7. It is submitted by the learned Counsel for the State that as prayer for anticipatory bail has been rejected in respect of the co-accused person on similar footing, such benefit should not be granted to the present petitioner.
8. It is well-settled in law that ground of parity can be used in affirmative but not in negative. In the present case, we find that the circumstances are not so clinching and in view of

multiple investigation, the probative effect of the witnesses has been weakened which shall be affected to a further extent if further investigation is taken up by the NIA on the basis of any order by the writ court. Something new may also come out therein.

9. It is our experience so far that in any case where multiple organizations are called upon to investigate, the case gets weakened in the trial as witnesses tend to change their version or they try to stick to their version on the basis of statement recorded under Section 164 Cr.P.C. for the fear of perjury.
10. In the present case, we do not find any scope of custodial interrogation but we are very much anxious about the trial to begin to bring the culprit under the sword of law.
11. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of injury as discussed (supra) and completion of investigation, it is directed that the petitioner shall surrender before the learned Additional Chief Judicial Magistrate, Chanchal, Malda in G.R. Case No. 752 of 2018 arising out of the aforesaid P.S. case within 15 days from today. On his appearance and application for bail he shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the conditions that:
 - i) if the petitioner fails to appear before the Ld. ACJM, Chanchal, Malda within the time specified, this order shall automatically lose effect as no

further extension shall be granted;

- ii) the petitioner shall not enter the jurisdiction of the P.S. under which the occurrence had happened till commencement of trial;
- iii) learned Trial Court if finds it just and proper may extend this condition till conclusion of trial;
- iv) the petitioner shall not leave the jurisdiction of the Trial Court for a period of 15 days at a time without obtaining prior permission of the Trial Court;
- v) the petitioner shall appear before the trial Court on each date of substantive hearing subject to provision of Section 317 Cr.P.C on cogent ground only;
- vi) the petitioner shall not threaten, induce or coerce any witness of this case in any manner whatsoever during the currency of this order.

12. Before parting with the order, we direct the concerned Court i.e., Ld. ACJM, Chanchal, Malda to take proactive step for procuring the attendance of other accused persons within a period of three months from the date of receipt of a copy of this order. if required, effective coercive steps be taken by learned Magistrate after holding meeting with the jurisdictional S.P. for execution of the NBW issued against the accused person. The case be committed to the Court of sessions as expeditiously as possible.

13. Taking into consideration the rival claims of both the parties

of involvement of influential political people, the Court of Sessions, Malda and the learned Sessions Judge, Malda is directed to conduct the trial himself without making over the trial to any other Additional Sessions Judge.

14. Accordingly, the prayer for the anticipatory bail is allowed.

15. The application being **CRM (A) 2958 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

