

10.08.2023
ML. 185
Court No. 29
Suvayan
(Allowed)

C.R.M. (A) 2970 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Saktipur** P.S. Case No. **195 of 2022** dated **31.10.2022** under Sections **302/34** of the IPC pending before the learned CJM, Berhampore, Murshidabad.

And

In the matter of: **Kajoli Bibi @ Marjina Khatun**

....petitioner.

Mr. Sekhar Kr. Basu, Sr. Adv.
Mr. Amanul Islam
Ms. Roma Roy
Mr. Sourav Mukherjee

...for the petitioners.

Mr. Swapan Banerjee
Ms. Purnima Ghosh

...for the State.

Ms. Minoti Gomes

...for the de facto complainant.

1. Heard learned Counsel for both the parties.
2. The death of the deceased can be attributed to external injury No. 2 outlined in the postmortem report. So far as external injury Nos. 1 and 3 are concerned those are not fatal if we compare them with columns 1 and 2 under the heading of "cranium and spinal cord". From the statement of eyewitnesses it is found that one shabal (crowbar) and a cycle pump were used to mount the assault. Both the weapons of offence have been seized. There is no specific statement by the witnesses as to who was holding the shabal (crowbar) and who was holding the cycle pump. There is allegation of joint assault by the petitioner and her brother-in-law, who is in custody. Such fact can be brought out in effective cross-examination of the witnesses only during trial. At this stage or at any stage it is not material as to who assaulted by which weapon if the charge is by aid of Section 149 IPC. So far as charge by aid of Section 34 IPC is concerned

specific part played by each accused can be taken into consideration to ascertain the common intention.

3. In the present case, it is not possible to come to such a conclusion from the statement recorded by the Police under Section 161 Cr.P.C. Charge-sheet has already been filed. One of the co-accused is already in custody. The petitioner being a lady is neither a threat to the society, nor there is any flight risk and there is no question of tampering with the evidence as charge-sheet has already been filed.
4. Regard being had to facts and submissions, factum of permanent residence of the petitioner, nature of allegation and completion of investigation, it is directed that the petitioner shall surrender before the learned Chief Judicial Magistrate, Berhampore, Murshidabad within 15 days from today in the G.R. case arising out of aforesaid P.S. case. On her appearance and application for bail the petitioner shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
5. The learned CJM is directed to act upon the server copy of this order, if required.
6. Accordingly, the prayer for the anticipatory bail is allowed.
7. The application being **CRM (A) 2970 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

