

10.08.2023

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rejected

C.R.M.(DB) No. 3018 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bolpur Police Station Case No. 245 of 2016 dated 21.09.2016 under Sections 323/325/419/420/304/201 of the Indian Penal Code.

And

In Re : Nantu Jash @ Baban Jash petitioner

Mr. Sujoy Sarkar

Mr. Rahul Chachan

....for the petitioner

Mr. Sudip Ghosh

Mr. Koushik Kundu

..... for the State

Learned Counsel for the petitioner has approached this Court seeking bail. He contends he is a police driver and did not play any role for the custodial death of the victim. He is in custody for more than 3½ years. He prays for bail.

Learned Counsel for the State opposes the bail prayer. He refers to the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure.

We have considered the evidence on record. Case involves custodial death of an under-trial. Materials on record leave no doubt that the victim suffered death in the police precincts. Petitioner who is attached to the police station was present at the place of occurrence. One would rarely get direct evidence of custodial torture and death which took place within the police station. No explanation is offered by the petitioner with regard to the circumstances leading to the homicidal death

of the under-trial. In view of gravity of the offence and prima facie involvement of the petitioner therein, we are not inclined to grant bail to the petitioner.

The application for bail is, thus, rejected.

Before parting we note the lackadaisical manner in which the prosecution has been conducted by the Public Prosecutor. He did not examine vital witnesses properly. Only their statements before Magistrate were exhibited. This is a clear dereliction of duty on the part of the Public Prosecutor to conduct the trial.

Legal remembrancer is directed to take immediate steps for removal of the Public Prosecutor and appoint a special Public Prosecutor to conduct the trial. It shall be open to the special Public Prosecutor to recall prosecution witnesses, if any, for a just decision of the case.

Copy of the order be communicated to the legal remembrancer as well as trial court for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)