

22.09.2023.
28.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 3228 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Malipanchghora P.S. Case No.175 of 2016 dated 09.07.2016 under Sections 498A/302/304B/506/34 of the Indian Penal.

In the matter of : **Nitesh Jaiswal @ Netesh Jaiswal.**
... Petitioner.

Mr. Pawan Kr. Guta,
Ms. Sofia Nesar,
Mr. Santanu Sett.
...for the Petitioner.

Mr. Binay Panda,
Mr. Subham Bhakat.
...for the State.

Mr. Sourav Chatterjee,
Ms. Suchitra Chatterjee.
...for the de-facto complainant.

1. Petitioner submits he is in custody for more than seven years. There is delay in trial. He prays for bail.
2. Learned Advocate for the State opposes the bail prayer. He submits report. From the report it appears eight witnesses have been examined. In the report it is noted by one more year trial would be concluded.
3. We have considered the materials on record. Allegation involves murder of the wife of the petitioner. She made dying declaration implicating the petitioner. Son of the couple also implicated the petitioner.
4. It is submitted on behalf of the petitioner son was tutored and the victim was not in a position to make statement

due to burn injuries. He also submitted that the door of the room was locked from inside.

5. Dr. Anindya Chowdhury, Medical Officer who recorded the dying declaration has proved it. He is the best witness to attest the capacity of the victim to make the dying statement. Though the minor son during his deposition showed hostility towards the petitioner, his evidence has to be seen in light of the fact he was admittedly at the place of occurrence and other attending circumstances of the case.

6. Undeniably there are ample materials implicating the petitioner in the crime. Offence, if proved, would attract mandatory life imprisonment. We do not express any final opinion with regard to the defence plea that the room was locked from inside save and except observing that the evidence relied in that regard from the cross-examination of PW 2 is not unequivocal. It is noted in the report that the trial would be completed within a year.

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

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

9. We request the trial Court to conduct trial on a day to day basis and conclude the same within one year from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties. In the event, the trial has not substantially progressed, petitioner shall be at liberty to seek bail on the ground of delay in trial.

10. Personal appearance of the Investigating Officer is noted and dispensed with.

11. Needless to mention observations on the merits of the case are tentative and shall not have any binding effect on the proceeding which shall be decided independently and in accordance with law.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)