

25.09.2023.
13.
Ct.No.28
as
(Allowed)

C.R.M. (DB) 3355 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Chopra P. S. Case No.234 of 2023 dated 30.03.2023 under Sections 326/307/302/34 of the Indian Penal Code read with Section 25(1)(a)/27/35 of the Arms Act.

In the matter of : **Ashro Md. @ Ashro & Ors.**

.... Petitioners.

Mr. Sekhar Kr. Basu, Sr. Adv.,
Mr. Soubhik Mitter,
Mr. Antarikhya Basu.

...for the Petitioner.

Mr. Rudradipta Nandy, Id. A.P.P.,
Ms. Sonali Das.

...for the State.

Mr. Niladri Sekhar Ghose,
Mr. M. Nazar Chowdhury,
Mr. Sourav Mondal,
Mr. M. A. Salik.

...for the Victim.

1. Petitioners submit there was a free fight. Both the sides suffered injuries. Petitioners did not share common intention to commit murder. It is unclear who had shot the victim. They pray for bail.

2. In view of the aforesaid submission records of the counter case registered at behest of one of the relations of the co-accused being Chopra P. S. Case No.614 dated 12.08.2023 has been produced before this Court.

3. Learned Additional Public Prosecutor opposes the bail prayer. He contends the parties are related to one another. A gun fight ensued resulting in death of two persons viz., Faizul

Rahaman @ Chaitu and one Hasu Sk. @ Hasimuddin. Others including one Afjal were injured. He clarifies FIR in the counter case was belatedly registered and injury on Majiruddin is minor and may not have occurred in course of the incident.

4. Learned Advocate for the de-facto complainant submits the counter case was registered on the basis of a belated FIR. It is unlikely Majiruddin who had been treated on 12th April, 2023 was injured during the incident on 30th March, 2023.

5. In rebuttal learned Senior Advocate submits a complaint was contemporaneously lodged but no steps were taken by the police administration. Thereafter, they had to approach the Magistrate for registration of the case.

6. We have given anxious consideration in the rival submissions from the Bar. Materials on record show there was dispute amongst the group over political matters. A gun fight ensued. Injuries of two persons viz., Faizul Rahaman @ Chaitu and one Hasu Sk. @ Hasimuddin were fatal. Others also suffered injuries. It is true FIR in the counter case was belatedly registered. Arguments have been advanced offering explanation for the delay. Credibility of such plea may be thrashed out during trial.

7. These aspects particularly the registration of the case and counter case require to be taken into consideration to decide whether all the accused shared common intention to murder. Statements of witnesses show petitioner Nos.2, 5 and 6 were armed with guns and fired at the victim. One injured

eyewitness viz., Afjal disclosed the role of the petitioner No.2, 5 and 6 in the firing. As a result, two persons had died.

8. Under such circumstances, we are not inclined to grant bail to the petitioner Nos.2, 5 and 6.

9. Accordingly, the prayer for bail of the petitioner Nos.2, 5 and 6 is rejected.

10. With regard to the roles of petitioner Nos.1, 3 and 4, we note that the said petitioners were present at the spot. They did not have fire arms neither it is alleged they had fired at the victims. It is contended one of their associates i.e. Majiruddin suffered gun shot injury. Medical reports have also been produced. Involvement of the petitioner Nos.1, 3 and 4 require to be assessed in the light of the aforesaid circumstances and as no specific overt act of firing is attributed to them, we are inclined to grant bail to them.

11. Accordingly, the petitioners viz., **1) Ashro Md. @ Ashro, 3) Jakir @ Jakir Hossain and 4) Abdus Salam** shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Islampur, Uttar Dinajpur subject to condition that they shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner Nos.1, 3 and 4 while on bail shall not enter Chopra Police Station except for the purpose court proceeding and shall provide the address where

he shall reside to the Investigating Officer as well as the court below and report to the Officer-in-charge of the Police Station concerned within whose jurisdiction he shall reside once in a week until further orders.

12. In the event the petitioner Nos.1, 3 and 4 fail to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

13. The application for bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)