

12.09.2023.
32.
Ct.No.28.
as
(Allowed)

C.R.M. (DB) 3489 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Tapan P.S. Case No.353 of 2022 dated 20.06.2022 under Sections 302/201 of the Indian Penal Code and charge sheet submitted under Sections 302/201/120B/34 of the Indian Penal Code.

In the matter of : **Ansar Ali Miah @ Bangla @ Anchhar Ali Miah & Ors.**

.... Petitioners.

Mr. Niladri Shekhar Ghosh,
Mr. Sourav Mondal,
Mr. Sakhawat Khandakar,
Md. M. Nazar Chowdhury,
Ms. Swati Jha.

...for the Petitioners.

Mr. Neguive Ahmed, Id. A.P.P.,
Ms. Trina Mitra.

...for the State.

1. Petitioners are in custody for eight months. It is contended there is no direct evidence connecting them with the murder. Incriminating statement of the complainant was recorded before Magistrate more than seven months after the incident. They pray for bail.

2. Learned Advocate for the State opposes the bail prayer. He submits petitioners were seen sitting with the deceased in the evening of the incident. Thereafter, the deceased went missing. There were telephonic exchanges between petitioners and deceased prior to the incident. Tower location also shows that the petitioners were present at the place of occurrence.

3. We have considered the materials on record. De-facto complainant-wife of the deceased initially stated she had seen

the petitioners with the deceased in the market place. Subsequently, the deceased went missing. Petitioners claimed they had left the place earlier.

4. More than seven months later, she made statement before Magistrate stating at 9.30 PM she had made a telephonic call to her husband and heard voices of the petitioners. Credibility of the said statement requires to be assessed in view of the fact that this incriminating circumstance is missing in her earlier statement before police or in FIR.

5. Apart from the said statement, prosecution has relied on the CDRs to show telephonic exchanges with the victim. Mere telephonic exchanges between the parties without anything more may not be sufficient to hold the petitioners were together with the victim at the time of occurrence. Residences of the petitioners are near the place of occurrence. It is trite range of a mobile tower is considerable and mere identification of same tower location may not be conclusive evidence with regard to presence of the petitioners and the victim at the same place.

6. In the light of the nature of evidence on record and as investigation is complete and as there is no chance of abscondence, we are inclined to release the petitioner on bail.

7. Accordingly, the petitioners 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 Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat 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.

8. In the event the petitioners 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.

9. This application for bail is, thus, disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)