

17.10.2023

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as/sdas
Allowed

C.R.M.(A) 4090 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Shyampukur Police Station Case No. 71 of 2023 dated 11.08.2023 under Sections 341/323/506/34 of the Indian Penal Code and subsequently charge-sheet submitted under Section 326 of the Indian Penal Code.

And

In Re : Mita Roy & Anr. petitioners

Mr. Sudipto Maitra, Sr. Adv.
Mr. Prabir Majumder
Mr. Snehansu Majumder
Mr. Debraj Shil

.....for the petitioners

Mr. Swapan Banerjee
Ms. Purnima Ghosh

....for the State

Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Mr. Pritam Roy
Mr. Sagnik Banerjee

.....for the de facto complainant

1. Petitioner no. 1 is the wife and petitioner no. 2 is the son of Pradip Roy, one of the sons of late Pankaj Roy. Petitioners and other heirs are embroiled in a battle over the will executed by their predecessor-in-interest viz. Bijoya Roy, wife of a prominent cricketer of yesteryears namely late Pankaj Roy. It is also submitted owing to bitterness amongst the heirs, the instant case has been registered. It is further alleged allegation of assault resulting in fracture is an afterthought and was embellished to harass and humiliate the petitioners. Accordingly, they pray for anticipatory bail.

2. Learned Counsel for the de facto complainant submits she was employed in the household for last three decades to take care of Prabhat Roy, another son of Late Pankaj Roy. On 11.08.2023 she was assaulted by the petitioners. She reported the matter to the police but no protection was given to her. On the next day she was again assaulted and suffered severe injuries in the eye and jaw. Her jaw was fractured. She was medically treated. Medical reports regarding her injuries were not collected during investigation and graver offences under Sections 326/307 of the Indian Penal Code were not added. Hence, she was constrained to approach this Court in WPA No. 19726 of 2023. Learned Single Judge directed addition of graver offences.

3. In light of the aforesaid submissions, this Court directed the investigating officer to be personally present and submit explanation with regard to his conduct.

4. Explanation is placed on record. Injury reports of the victim have also been placed before us.

5. We have considered the materials on record. Victim is a nurse who was employed in the household of late Pankaj Roy for the last three decades. She used to take care of Prabhat Roy, one of the sons of late Pankaj Roy who is a person with special needs. Owing to a dispute over ancestral property, a skirmish broke out between the brothers. It is alleged that the victim was mercilessly assaulted on two days i.e. on 11.08.2023 and 12.08.2023.

6. We have also considered the injury reports of the victim. Injuries sustained on 11.08.2023 are simple but the injuries sustained on the next day appear to be grievous. She suffered eye injury as well as fracture on her jaw. Role of the police in the matter is most unfortunate. Though the victim had informed with regard to assault on 11.08.2023, no steps were taken to ensure her protection. This appears to have aggravated the situation. Petitioners assaulted her again and she suffered grievous injuries. Even thereafter no assistance was given to the victim and medical reports disclosing fracture were not made a part of the case records. We deprecate the conduct of the investigating agency.

7. Keeping in mind the totality of the circumstances, we are of the view petitioners are not habitual criminals and the incident appears to have arisen over a dispute amongst brothers over their share in the ancestral properties. Further progress in investigation does not require their custodial interrogation. However, it is paramount to ensure that the victim is rehabilitated at her place of employment and assured of her safety. Taking into consideration the necessity for witness protection and other relevant factors, we are of the opinion though custodial interrogation of the petitioners may not be necessary, their movement requires to be adequately restricted to prevent commission of similar offences in future.

8. Accordingly, we direct that in the event of arrest the petitioners shall be released on bail upon furnishing a bond of

Rs.10,000/- each, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that the petitioners, while on bail, shall not enter the jurisdiction of Shyampukur Police Station and shall provide the address where they shall presently reside to the investigating officer as well as the court below and petitioner no.2 shall report to the officer-in-charge of the police station concerned within whose jurisdiction he shall presently reside once in a week until further orders. They shall appear before the court below and pray for regular bail within a period of four weeks from date.

9. This application for anticipatory bail is, thus, allowed.

10. Presence of the investigating officer is noted and dispensed with.

11. We record our displeasure with regard to the manner in which he has conducted the investigation. We direct the officer-in-charge of the police station concerned to take over the investigation of the case from the said investigating officer and continue the investigation himself in a fair and impartial manner. Officer-in-charge shall ensure adequate witness protection is given to the victim and her family.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)