

14.12.2023

SL. 4

Court No. 29

Suvayan

(Allowed)

C.R.M. (A) 4531 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Murutia** Police Station Case No. **274 of 2023** dated **19.09.2023** under Sections **302/120B/34** of the IPC.

And

In the matter of: **Mohan Mondal**

....petitioner.

Mr. Niladri Sekhar Ghosh

Mr. Debarshi Brahma

Ms. Sompurna Chatterjee

Mr. Sourov Mondal

Ms. Labani Sikdar

...for the petitioner.

Mr. Madhusudan Sur, APP

Mr. Arabinda Manna

...for the State.

1. Heard learned Counsel for both the parties.
2. The petitioner's brother (Shaukat Mondal) was taken to Police Station, he was mercilessly assaulted and his dead body was found in a bamboo bush next day morning. When final report was filed by the police, the deceased, Shaukat Mondal's wife Manjura Bibi objected to the same and filed WPA 22111 of 2023 in this Court. While disposing of the aforesaid writ petition on 18.09.2023 this Court directed registration of the FIR so far as death of Shaukat Mondal is concerned.
3. On the date the order was passed Mafuza Mondal @ Mafuza Bewa who is the wife of the petitioner was called to the Police Station and the matter was intimated to the Superintendent of Police by the petitioner. On the very next day the present FIR was lodged implicating the co-accused Mafuza Mondal @ Mafuza Bewa (wife of the present petitioner), Baitullah Khan, Dakhidul Sk. and Dilip Pahari who were witnesses to the incident of the deceased brother of the petitioner being taken to the Police Station by the police. All the aforesaid persons who

were instrumental so far as alleged action of the police is concerned have been made accused persons in the present case which is based on circumstantial evidence.

4. In the present case a dead body was found near village, viz., Dhara which is about 14 kilometers away from the house of the present petitioner and other co-accused persons and the present petitioner has been implicated on the basis of evidence of four witnesses who have stated in their statement recorded under Section 161 Cr.P.C. that they saw or peeped into see the present petitioner and other co-accused persons assaulting the deceased in the present case. The statements of the said chance witnesses who are alleged to be eyewitnesses have been recorded under Section 164 Cr.P.C. But from the narration of events, we find that there was possibility of counter action by the police in view of allegation of custodial death of the brother of the petitioner at the hand of the police. So far as evidence of chance witnesses are concerned, in the backdrop of the case the evidentiary value of said witnesses be better left to be decided by learned trial court on appreciation of entire evidence in accordance with law.
5. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation, nature of evidence and substantial progress in investigation, it is directed that the petitioner shall be released on bail by the Arresting Officer in the event of his arrest in the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
6. The concerned Arresting Officer is hereby directed to act upon

the server copy of this order.

7. Within 21 days from today the petitioner shall appear before the I.O. along with a server copy/certified copy of this order. If server copy is supplied, learned I.O. shall act upon that.
8. Accordingly, the prayer for the anticipatory bail is allowed.
9. The application being **CRM (A) 4531 of 2023** is disposed of.
10. Before parting with the order, we feel persuaded to observe here that the instant case by the police after alleged death of the brother of the present petitioner allegedly in the hands of the police might be a coincidence or a camouflage action by the police. We, therefore, direct the local CBI authority to investigate into the case to find out as to whether the present case is a counter blast to the alleged custodial death of the brother of the present petitioner. If necessary exemplary action should be taken against the police officers who are instrumental in registering the present case. The investigation by the CBI should be concluded within 60 days from the date of receipt of a copy of this order.
11. Department is directed to supply a copy of this order to learned Additional Solicitor General by next week instructing him to set in motion the CBI agency of the District.
12. Department is further directed that a copy of the order be supplied to Superintendent of Police Nadia also for needful action at his end.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

