

19.12.2023

ML. 83

Court No. 29

Sourav

(Partly

Allowed)

C.R.M. (A) 4751 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Chanchal** Police Station Case No. **1141** of **2023** dated **29.08.2023** under Sections **147 / 148/ 149/ 302/ 325/ 447/ 506/ 326/ 307** of IPC read with Sections **25(1)(a)(1B)/27** of the Arms Act (corresponding to G.R. Case No. 2791 of 2023 pending before the learned ACJM, Chanchal, Malda).

And

In the matter of: **Ajijur Rahaman & Ors.**

....petitioners.

Mr. Milon Mukherjee, Sr. Adv.
Md. Safiur Rahaman
Mr. Sourav Paul

...for the petitioners.

Mr. Madhusudan Sur, Ld. APP
Mr. Arabinda Manna

... for the State.

Ms. Sujata Das

... for the defacto complainant.

1. Heard learned Counsel for the parties.
2. It is submitted by Mr. Mukherjee, learned Senior Counsel appearing for the petitioners that the name of the petitioner no. 1 (Ajijur Rahaman) and petitioner no. 5 (Dilwar Hossain) have not been shown as accused in the charge-sheet.
3. In view of such fact, the present petition for anticipatory bail has become infructuous in respect of petitioner no. 1 (Ajijur Rahaman) and petitioner no. 5 (Dilwar Hossain).
4. Accordingly, this petition is dismissed as infructuous in respect of petitioner no. 1 (Ajijur Rahaman) and petitioner no. 5 (Dilwar Hossain).
5. So far as petitioner no. 4 (Emdadul Hoque) is concerned, there is strong objection by Mr. Sur, learned Additional Public

Prosecutor that in the statement of the eyewitnesses recorded under Section 164 Cr.P.C., there is allegation of specific overt act against him so far as the offence of murder is concerned though the murder has been caused by gunshot injury.

6. Mr. Mukherjee, learned Senior Counsel appearing for the petitioners admits the position as submitted by Mr. Sur, learned APP.
7. In view of such fact, we are not inclined to exercise our discretion in favour of petitioner no. 4 (Emdadul Hoque) under Section 438 Cr.P.C.
8. Accordingly, his prayer for anticipatory bail is rejected.
9. So far as other petitioners, i.e., petitioner no. 2 (Sayed Ali), petitioner no. 3 (Ansarul), petitioner no. 6 (Masidur Rahman), petitioner no. 7 (Abaidur Rahman) and petitioner no. 8 (Alam) are concerned, it is fairly submitted at the Bar that there is allegation about their presence at the spot but there is no allegation of specific overt act against any of the them by any of the eyewitnesses so far as transaction is concerned.
10. In view of such fact and materials placed before us, we are of the view that the aforesaid petitioner nos. 2, 3, 6, 7 and 8 are better circumstanced with Tafijul Hoque @ Tafijuddin who has been released on anticipatory bail vide order dated 03.10.2023 passed in CRM (A) 4011 of 2023.
11. Regard being had to such facts and submissions, factum of permanent residence of the petitioner no. 2 (Sayed Ali), petitioner no. 3 (Ansarul), petitioner no. 6 (Masidur Rahman), petitioner no. 7 (Abaidur Rahman) and petitioner no. 8 (Alam),

nature of allegation, role of the present petitioners in the entire transaction, though may be culpable *prima facie* by aid of Section 149 IPC and completion of investigation, it is directed that the petitioner nos. 2, 3, 6, 7 and 8 shall surrender before the learned Additional Chief Judicial Magistrate, Chanchal, Malda in G.R. Case No. 2791 of 2023 arising out of the aforesaid P.S. case within 15 days from today. On their appearance and application for bail, they shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the condition that petitioners shall appear before the learned Trial Court on each date of substantive hearing subject to provision of Section 317 Cr.P.C. with a further condition, the present petitioner nos. 2, 3, 6, 7 and 8 shall not leave the territorial jurisdiction of the learned trial Court without obtaining prior permission of the learned trial Court during investigation.

12. Accordingly, the prayer for anticipatory bail is allowed in-part.

13. The application being **CRM (A) 4751 of 2023** is disposed of.

14. Learned Additional Chief Judicial Magistrate, Chanchal, Malda is hereby directed to act upon the server copy of this order, if required.

(Chitta Ranjan Dash, J.)

(Ajay Kumar Gupta, J.)

