

19.12.2023

ML. 106
Court No. 29
Sourav
(Partly
Allowed)

C.R.M. (A) 4855 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: **Mahidur & Ors.**

....petitioners.

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

...for the petitioners.

Mr. Saibal Bapuli, Ld. APP
Mr. Soumik Ganguli

... for the State.

Ms. Sujata Das

... for the defacto complainant.

1. Heard learned Counsel for the parties.
2. At the very outset, it is submitted by Mr. Mukherjee, learned Senior Counsel that the petitioner no. 1 (Mahidur), petitioner no. 2 (Barjahan) and petitioner no. 5 (Rafikul Ali) have not been sent for trial in the charge-sheet and as such the present petition for anticipatory bail in respect of them have become infructuous.
3. Accordingly, this petition is dismissed as infructuous in respect of petitioner no. 1 (Mahidur), petitioner no. 2 (Barjahan) and petitioner no. 5 (Rafikul Ali).
4. It is fairly submitted at the Bar that so far as petitioner no. 3 (Rejaul) and petitioner no. 4 (Badol) are concerned, there is no allegation of specific overt act against them by any of the

eyewitnesses. So far as petitioner no. 6 (Majarul @ Dulal) is concerned, there is allegation of some specific overt act against him in the statement of the eyewitnesses and injured witnesses recorded under Sections 161 and 164 Cr.P.C. though the death of the deceased is due to gunshot injury.

5. In view of such fact, we are not inclined to exercise our discretion in favour of petitioner no. 6 (Majarul @ Dulal) under Section 438 Cr.P.C.
6. Accordingly, his prayer for anticipatory bail is rejected.
7. So far as petitioner no. 3 (Rejaul) and petitioner no. 4 (Badol) are concerned, there is no allegation of specific overt act against them.
8. Regard being had to such facts and submissions, factum of permanent residence of the petitioner no. 3 (Rejaul) and petitioner no. 4 (Badol), 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. 3 and 4 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. 3 and 4 shall not leave the territorial jurisdiction of the learned trial Court without obtaining prior permission of the learned trial Court during investigation.

9. Accordingly, the prayer for anticipatory bail is allowed in-part.
10. The application being **CRM (A) 4855 of 2023** is disposed of.
11. 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.)

