

20.11.2023

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rejected

C.R.M.(DB) No. 4193 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Nowda Police Station Case No. 330 of 2022 dated 24.11.2022 under Sections 302/34/120B of the Indian Penal Code and Sections 25/27/35 of the Arms Act and Sections 3/4 of the Explosive Substances Act.

And

In Re : Elem Box Khan Petitioner

Mr. Anisur Rahman

....for the petitioner

Ms. Z. N. Khan

Ms. Mayukhi Mitra

.... for the State

1. Learned Counsel for the petitioner submits he was not present at the place of occurrence. He has been falsely implicated. Co-accused are on bail. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioner was identified in test identification parade by the witnesses. Co-accused who have been enlarged on bail had not been identified by the witnesses.

3. We have considered the materials on record. One witness i.e. Motirul Islam identified the petitioner as one of the persons who was at the spot where the victim was murdered. This prima facie establishes presence of the petitioner at the place of occurrence as a member of the group who shared common intention to commit the murder. It is contended

another witness, Jony Halsana has not stated the name of the petitioner. Statement of Jony Halsana does not improbabilises the presence of the petitioner. He states number of persons were gossiping at the spot and gives out the names of some of the persons who were present with others. Hence, his statement does not improbabilise that of Motirul Islam with regard to the presence of the petitioner at the spot. When offences are committed by a number of accused, statements of witnesses with regard to the identity of the miscreants must be considered in conjunction with one another and not in isolation. Under such circumstances, we are of the opinion there are prima facie materials that petitioner was present at the spot as a member of the group who shared common intention to commit the murder. He does not stand on the same footing with co-accused who were not present and have been enlarged on bail. Accordingly, we are not inclined to grant bail to the petitioner at this stage.

4. The application for bail is, thus, rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)