

18.12.2023
Sl. No.91
akd
[Rejected]

C. R. M. (DB) 4282 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.10.2023 in connection with Nabagram Police Station Case No.213 of 2023 dated 16.06.2023 under Sections 341/325/326/307/302/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act. (G.R. Case No.1909 of 2023)

And

In Re: ***Lal Babu Sk. & Ors.***

... .. Petitioners

Mr. Sabir Ahmed
Mr. Abdur Rakib
Mr. Biswajit Sarkar
Mr. Tasnim Ahmed
Ms. Suman Biswas
Mr. Dhiman Banerjee
Mr. Soham Chakraborty

... .. for the petitioners

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

... .. for the State

1. It is submitted on behalf of the petitioners that they are in custody for about 185 days. It is further submitted petitioners have been falsely implicated. Accordingly, they renew their prayer for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits bail prayer of co-accused viz. Ismail Sk. has been turned down by this court.
3. In reply, it is contended thereafter fourteen co-accused have been granted pre-arrest bail by a coordinate Bench of this court.
4. We have considered the materials on record. Statements of witnesses recorded under Section 164 of the Code of Criminal Procedure show petitioners were members of a group who had assaulted the victim to death. They stand on the same footing with co-accused viz. Ismail Sk. whose bail prayer has been turned down

by this Bench. Thereafter, in CRM (A) 4380 of 2023 and CRM (A) 4315 of 2023 respectively, a number of co-accused had been granted pre-arrest bail by a coordinate Bench of this court.

5. We have perused the orders passed by the coordinate Bench. In the said orders the Bench noted statements of witnesses recorded under Section 164 of the Code of Criminal Procedure implicating the accused but as the investigation had concluded, they were granted pre-arrest bail.
6. The Apex Court has held bail ought not to be given to an accused mechanically on the ground of parity. Nature and gravity of the offence and materials collected during investigation must also be taken into consideration¹. In a case involving murder when ample materials have been collected in course of investigation in support of the accusation it would not be prudent to release an accused on the premise that investigation is complete. To do so, would amount to non-consideration of the most relevant and compelling circumstances namely, gravity of the offence which, if proved, would attract mandatory life imprisonment and involvement of the offender therein.
7. During the hearing we were also informed that the State is taking steps to challenge the orders granting anticipatory bail to co-accused before the Hon'ble Apex Court.
8. For these reasons, we are unwilling to enlarge the petitioners on bail on parity.
9. The application for bail is thus rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr., (2021) 6 SCC 230

