

11.12.2023
Item No.3
Ct. No. 5
CHC
(Rejected)

C.R.M.(DB) 4328 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Kotwali** Police Station Case No.**437/2019** dated **03.08.2019** under Sections **341/307/326/302/120B/34** of the Indian Penal Code.

And

In the matter of: Sourav Bose @ Bukai

..... petitioner

Mr. Soumyajit Das Mahapatra,
Ms. Madhurai Sinha
....for the petitioner

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee
....for the State

Petitioner prays for bail.

Learned advocate appearing for the petitioner submits that, the petitioner is in custody for 2 years 3 months. The prosecution initially named 18 witnesses in the charge-sheet out of which 16 witnesses were examined. Six additional witnesses were also examined. He draws the attention of the Court to the deposition of the prosecution witnesses. He contends that, none of the prosecution witnesses implicate the petitioner. Moreover, he submits that, two other co-accused namely, Dipu Das and Sunil @ Sulin Mukhi were enlarged on bail by the coordinate Bench.

Learned advocate appearing for the State submits that, eye-witnesses to the incident of murder recorded statements under Section 164 of the Criminal Procedure Code which were duly marked exhibits at the trial. Although, some of the prosecution witnesses turned hostile, none the less, the statements recorded under Section 164 of the Criminal Procedure Code were marked exhibits. There, the witnesses described the involvement of the petitioner vividly. He opposes the grant of bail.

Learned advocate appearing for the petitioner submits that, at the trial, the so-called eye-witnesses claimed that they were pressurized by the police to record the statement under Section 164 of the Criminal Procedure Code.

The trial is in progress. It involves murder of a person.

At the stage of considering the prayer for bail we are not called upon to evaluate the evidence led by the prosecution at the trial. In any event, evidence of prosecution is yet to be closed. It is ongoing.

We, therefore, refrain ourselves from evaluating the evidence led at the trial and arriving at a finding whether, petitioner stands implicated as charged or not.

For the purpose of evaluating the prayer for bail we find *prima facie* that there are materials suggesting involvement of the petitioner in the grievous offence of murder.

The claim for parity require consideration.

Two co-accused were enlarged on bail namely, Dipu Das and Sunil @ Sulin Mukhi. Dipu Das was enlarged on bail on December 13, 2019 by holding that, there is no specific overt act attributed to him in the alleged crime by the witnesses. Sunil @ Sulin Mukhi was enlarged on bail by an order dated March 5, 2020 on the claim of parity.

As noted above, the trial is in progress. Some of the prosecution witnesses turned hostile.

At this stage, therefore, to enlarge the petitioner on bail, may resonate on the quality of trial. As it is, some prosecution witnesses tendered hostile.

We, therefore, refrain from doing so.

Prayer for bail is rejected.

We, however, request the learned trial Court to invoke provisions of Section 309 of the Criminal Procedure Code in disposing of the trial as expeditiously as possible. He is requested not to grant any unnecessary adjournments to any of the parties.

Prayer for bail of the petitioner is rejected.

CRM(DB) 4328 of 2023 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

