

16.01.2023
Sl. No.21
akd
[PARTLY
ALLOWED]

C. R. M. (DB) 4389 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.12.2022 in connection with Lalgarh Police Station Case No. 04 of 2011 (CBI, SCB, Kolkata Case No. RC 3(S)/2011-Kol) dated 21.02.2011 under Sections 120B/148/149/326/307/302 of the Indian Penal Code and Sections 25/27 of the Arms Act.

And

In Re: **Lob Duley & Ors.**

... .. Petitioners

Mr. Anirban Das

... .. for the petitioners

Mr. Amajit De

... .. for the CBI

It is submitted on behalf of the petitioners that they are in custody for more than eleven years. It is further submitted co-accuseds have been enlarged on bail.

Report is filed on behalf of the Central Bureau of Investigation (CBI).

We have considered the materials on record. Though PW5 identified petitioner no.1 during Test Identification Parade, the witness failed to identify the said petitioner in court. Similarly, PW24 failed to identify petitioner no.2 in court though he had identified him during Test Identification Parade. It is relevant to note identification during Test Identification Parade is not substantive evidence. Petitioner no.3 however, has been identified by PW5 during trial as one of the persons who fired from the roof of Rathin Dandapat.

In view of the aforesaid circumstances, we are of the opinion petitioner nos.1 & 2, who have not been identified by any witness in court till date as the persons who fired at the victims, stand on the same footing with co-accuseds who are on bail.

Hence, we are inclined to grant bail to accused/petitioner nos.1 & 2 on the ground of inordinate delay in trial and on principles of parity.

Therefore, the accused/petitioner nos.1 & 2 namely **(1) Lob Duley & (2) Rupchand Ahir**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Paschim Medinipur subject to condition that the said petitioner nos.1 & 2 shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

Petitioner no.3 has been identified by one of the witnesses i.e. PW5 as one of the assailants. PW5 claimed he was seen firing from the roof of Rathin Dandapat. Bail prayer of Rathin Dandapat has been turned down. Hence, petitioner no.3 does not stand on the same footing with co-accuseds who have been enlarged on bail.

Under such circumstances, keeping in mind gravity of the offence involving brutal murder of nine persons and as petitioner no.3 was identified by eyewitness as one of the persons who fired at the victims, we are not inclined to grant bail to petitioner no.3 namely, **(3) Nirajan Kotal** at this stage.

The application for bail is thus disposed of.

Trial court is directed to expedite the trial and conclude the same at an early date.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

