

AD-17
Ct No.01
Jalpaiguri
01.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (DB) 474 of 2022

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on **23.12.2022** in connection with **GR Case No. 4968 of 2022**, arising out of **Siliguri** Police Station Case No. **1049 of 2022** dated **11.11.2022** under Sections **341, 323, 326, 307, 506 and 509 IPC**.

And

In the matter of: **Soumyadeep @ Soumyadip Saha @ Deep @ Dip**

.... petitioner

Ms. Rima Sarkar,
Ms. Sidhi Sethia

... for the petitioner

Mr. Joyjit Chowdhury,
Mr. Somraj Paul,
Mr. Abhishek Singh

....for the *de facto* complainant

Mr. Niloy Chakraborty,
Mr. Tapan Bhattacharjee

... for the State

The petitioner contends that the petitioner was not directly named in the accusations levelled.

That apart, the petitioner is already in custody for 75 days. It is also contended by the petitioner that the charge-sheet in the case has already been filed and the injury of the victim was of a simple nature.

It is submitted that even in the statement of the victim under Section 164 of the Code of Criminal Procedure (CrPC), the name of the present petitioner was never taken.

Learned counsel appearing for the State points out to the two apparently contradictory injury reports in this case. The first, issued by a Government Hospital, said that the injury was of a grievous nature.

However, the certificate issued by a Private Hospital after four days indicates that the injury was simple.

Learned counsel appearing for the *de facto* complainant vehemently opposes the prayer for bail and submits that the petitioner is a habitual offender inasmuch the petitioner was implicated in a similar case previously, in which he obtained anticipatory bail on condition of compliance of Section 438(2) of the CrPC. It is further argued that Section 437(3)(b) of the Code specifically indicates that the person commits a similar offence subsequently to that which he committed on the first instance, the condition of Section 438(2) will stand violated. Learned counsel further contends that the injury was reported to be of a grievous nature and the victim received 34 stitches in his abdomen and 16 stitches on his face. Moreover, the fact that the victim was treated for some time in a Private Hospital, coupled with the fact that there were several injuries on the face, clearly indicate towards the commission of the offence against the victim.

Keeping in mind the antecedents of the petitioner and the grievous nature of the offence, it is submitted that the prayer for bail ought to be refused. It is further contended that although a co-accused person was previously released on bail by a coordinate Bench, the arguments made herein were not advanced on behalf of the *de facto* complainant in the said case.

Heard learned counsel for the parties.

First, we find from the records that the charge-sheet has already been filed which *prima facie* negates the necessity for keeping the petitioner in detention further. That apart, there is a contradiction in the injury reports of the two Hospitals-in-question, one indicating that the injury was grievous in nature and the other that it was simple as well as the fact that the simple injury report was issued by a Private Hospital of the choice of the victim where he got himself treated, leaves a scope of doubt as to the commission of the offence at least by the present petitioner.

Moreover, we do not find from the records that the petitioner was specifically named anywhere as the specific offender who inflicted the injury-in-question on the victim.

Inasmuch as the applicability of Section 438(2) and Section 437(3)(b) of the CrPC is concerned, the language of the said two provisions, read in conjunction, clearly indicate that a second count of offence shall come within the purview of the said bar. However, in the present case, in view of the discussions above, there is nothing clinching to indict the present petitioner at the present juncture of the offence of inflicting any injury on the victim. As such, it cannot be said, at the present moment at least, that a second “offence” has been committed beyond reasonable doubt by the petitioner.

Even keeping in mind the ratio laid down in the judgment of the Supreme Court reported at (2010) 14 SCC 496, relied on by the *de facto* complainant, after considering the nature, character and previous behavior of the petitioner and the petitioner’s antecedents,

we do not find sufficient materials on record at present to incriminate the petitioner of the offence as alleged.

Hence, we feel that, for the purpose of consideration of an application for bail, the above developments and factors are sufficient to extend the benefit of doubt to the petitioner.

As such, CRM (DB) 474 of 2022 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate at Siliguri.

That apart, the petitioner shall attend trial on every date and shall not leave the territorial jurisdiction of the trial court during the entire period of trial. However, it is made clear that the petitioner shall not in any manner directly or indirectly make any inducement, threat or promise to any person having direct knowledge of the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

It is further clarified that the bail is being granted on further condition that the petitioner shall not approach the close vicinity of the victim's residence or workplace in any manner whatsoever during the pendency of the trial.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)