

04.03.2024.
21.
Ct.No.28
as
(Rejected)

C.R.R. 215 of 2024
in
C.R.M. (DB) 74 of 2024

In Re: Court on its own motion.

Mr. Dibyayan Banerjee,
Mr. Nayan Biswas.

...for the Petitioner.

Mr. Sabyasachi Banerjee,
Mr. Angshuman Chakraborty,
Mr. S. S. Saha.

...for the Opposite Party.

Mr. N. Ahmed, Id. A.P.P.,
Mr. S. Kundu.

...for the State.

In Re :CRR 215 of 2024

1. During hearing of the bail application of Mafuza Piyada, it was brought to the notice of this Court that co-accused Abul Hossain Sk. has been enlarged on bail. On query, this Court was informed that de-facto complainant had filed a petition stating Abdul Hossain Sk. is no way involved. Accordingly, bail was granted.

2. Case relates to the brutal murder of a minor child. As the offence is non-compoundable one, there is no scope to withdraw the accusation or give a cleanhit to any accused prior to trial. Taking notice of the unusual manner in which bail was granted to Abul Hossain Sk., this Court by order dated 11.01.2024 issued a Rule calling upon said accused to show cause why his bail shall not be cancelled.

3. In response to the Rule, Abul Hossain Sk. has filed an affidavit.

4. Mr. Banerjee for Abul Hossain Sk. contends there are discrepancies in the manner in which the child had been murdered. One witness viz., Sofia Sardar claimed that the child was suffocated and strangulated to death. Another witness i.e. Mahfuz Piyada, brother of the deceased child stated that he was assaulted by Abul Hossain Sk. with a hammer. Post mortem report indicates extensive injuries in the anus and other parts of the body. Father of the child has not supported the prosecution case. Hence, he submits that the bail order may not be interfered with.

5. Learned Additional Public Prosecutor opposes the bail prayer. He contends the minor was a four year old child. Evidence on record unequivocally establish the presence of the petitioner and co-accused Mafuza Piyada, mother of the child in the house. Child suffered extensive injuries resulting in his death. Undeniably, the injuries are homicidal in nature. Father of the victim is not an eyewitness and the trial Judge had erred in law in relying on his affidavit to come to a conclusion that petitioner is not connected with the incident.

6. We have considered the materials on record in the light of the aforesaid submissions. Abul Hossain Sk. was known to the co-accused Mafuza Piyada, mother of the victim child. He along with Mafuza Piyada were present in the house when the victim was murdered. Their presence is noted by the other children viz., Mahfuz Piyada and Mamud Hossain Piyada. Father of child Tayeb Ali Piyada was not present in the house. For reasons best known to him, he colluded with the accused and filed an affidavit stating Abul Hossain Sk. is not

connected with the offence. But the evidence on record particularly that of the brothers viz., Mahfuz Piyada and Mamud Hossain Piyada give a different picture. Initially, both these witnesses gave evasive answers in Court. Upon intervention of this Court and direction to provide police protection and counseling, the witnesses divulged the incident in full. Their versions corroborate their earlier statements before Magistrate. Mahfuz Piyada stated Abu Hossain Sk. had given him money to buy chips. On return he found Abul Hossain Sk. was hitting his brother with a hammer. His mother was assisting Abu Hossain Sk. Mamud Hossain Piyada corroborated his brother and spoke about the presence of both the accused at the place of occurrence when his brother was murdered.

7. These materials on record were ignored by the trial Judge and who relied on inadmissible material i.e. exonerative affidavit filed by the father of the victim to grant bail. Bail granted on the basis of inadmissible materials and without considering cogent and convincing materials with regard to involvement of the accused in the crime renders the order perverse. It has been strenuously argued there is divergence with regard to the manner in which the assault took place. While one witness stated that the victim had been suffocated, one of the brothers of the deceased claimed that the victim had been assaulted. Post mortem report shows extensive injuries in the anus and other parts of the body. This corroborates the version of the brother of the deceased, namely, Mahfuz Piyada. That apart consistent versions of all

witnesses establish the presence of Abul Hossain Sk. at the place of occurrence where the victim was brutally murdered.

8. Ignoring these clinching and incriminating materials, trial Judge relied on an exonerative affidavit filed by the father of the deceased which presumably was procured through illegal means. It is trite such affidavit has no legal value and ought not to have been considered while adjudicating the prayer for bail. Hence, the bail order is patently perverse and in view of the gravity of offence and cogent materials implicating the accused in the crime, we are inclined to cancel his bail. Bail bonds furnished by him are cancelled.

9. Needless to mention observation made in this order are for the purpose of disposal of the Rule and shall not have any conclusive bearing during the trial of the case.

10. We are informed Abul Hosain Sk is in custody in another case. Investigating agency is directed to show him arrested in the present case also.

11. Rule is made absolute.

In CRM (DB) 74 of 2024.

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection Kultuli P.S. Case No.122 of 2023 dated 22.02.2023 under Sections 302/377/34 of the Indian Penal Code and Sections 6/17 of the POCSO Act.

In the matter of : **Mafuza Piyada.**

... Petitioner.

12. Petitioner is in custody for more than a year. She contends she is the mother of the victim boy. She did not play any role in the crime and was not present when the incident occurred. Accordingly, she prays for bail.

13. Learned Advocate for the State opposes the bail prayer.

14. We have considered the materials on record. Petitioner and Abul Hossain Sk. were present when the minor child was murdered. Statements of the children of petitioner viz., Mahfuz Piyada and Mamud Hossain Piyada establish her involvement in the crime. During cross-examination of these witnesses, no suggestion with regard to alibi had been raised. Offence involves brutal murder of a four year old child. There are *prima facie* evidence implicating the petitioner in the murder. Trial is in progress.

15. Under such circumstances, we are not inclined to enlarge the petitioner on bail.

16. Accordingly, the prayer for bail of the petitioner is rejected.

17. We request the trial court to conduct the trial with utmost expedition by fixing schedules at short intervals and conclude the same at an early date preferably within 18 months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

18. Parties shall co-operate with the trial court and communicate this order for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)