

31.01.2024
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allowed

CRM(DB) No. 280 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Malipanchghora Police Station Case No. 35 of 2021 dated 27.02.2021 under Sections 302/506/120B of the Indian Penal Code read with Sections 25/27 of the Arms Act.

And

In Re : Anwarul Haque @ Dulara petitioner

Mr. Mrityunjoy Chatterjee

Mr. Manas Das

Mr. Debapriya Majumder

....for the petitioner

Ms. Rita Datta

.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. It is also submitted he has been falsely implicated in the case. It is further submitted co-accused including Bikram Gupta has been enlarged on bail by this Court as well as Hon'ble Apex Court. There is slow progress in trial. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits deceased had made an oral dying declaration to his brother, Raja Mahato disclosing the name of the petitioner as one of the assailants.

3. We have considered the materials on record including the statement of the said Raja Mahato. The witness was present with the victim when two persons came in a motorbike and fired at the victim. As per the witness, persons were wearing helmets

on their heads. Moreover, the fact that the victim had made an oral dying declaration to Raja Mahato does not find place in the FIR lodged by the uncle of the deceased who was aware of the presence of Raja Mahato at the place of occurrence. These circumstances ought to be borne in mind while considering the credibility of the oral dying declaration. There is slow progress in trial and co-accused including Bikram Gupta who had enmity with the deceased has been enlarged on bail. Under such circumstances, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Howrah, subject to conditions that petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

5. In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

6. The application for bail is, accordingly, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)