

22.02.2024.
29.
Ct.No.28.
as
(Allowed)

C.R.M. (DB) 545 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kashipur P.S. Case No.277 of 2023 dated 16.06.2023 under Sections 147/148/149/341/302/109/120B of the Indian Penal Code and Section 9B of the Explosives Act and charge sheet submitted under Sections 147/148/149/341/302/109/120B of the Indian Penal Code and Section 9B of the Explosives Act.

In the matter of : **Jahangir Mali.**

.... Petitioner.

Mr. Kallol Basu,
Mr. Suman Banerjee.

...for the Petitioner.

Mr. Debasish Roy, Id. P.P.,
Mr. Shibaji Kr. Das.

...for the State.

1. Petitioner is a member of a political party. On the day of occurrence, he along with other supporters were proceeding to the BDO Office to ensure their candidates are able to file nomination papers for the Panchayat election. A group belonging to a rival political party confronted them. There was a skirmish and one Raju Naskar, a supporter of the rival political party expired. No overt act is attributed to petitioner and he did not share common object to commit murder. He does not have criminal antecedents and accordingly he prays for bail.

2. Learned Public Prosecutor opposes the bail prayer. He contends one Nawsad Siddique, a leader of the political party had incited his supporters to resort to violence. Pursuant

thereto, an unlawful assembly was formed. Petitioner was a member of the unlawful assembly and threw bombs resulting in death of Raju Naskar. Similar deaths had occurred in the locality on the same day and other cases have been registered. Accordingly, he opposes the bail prayer.

3. We have considered the materials on record including the FIR and charge sheet. Allegations in the charge sheet show Nawsad Siddique had held a meeting on the fateful day. In the course of meeting, he exhorted his supporters to submit nomination papers at any cost. Right to submit nomination papers is a democratic right. Exhortation on such score *per se* may not amount to incitement to form unlawful assembly.

4. Be that as it may, allegations in the First Information Report show a large number of supporters of the said political party being variously armed proceeded to the BDO Office to submit nomination papers. On their way they met a group of supporters of another political party. It is alleged some of the supporters of the petitioner's party threw bombs resulting in death of one Raju Naskar. There is no allegation that petitioner had thrown bombs resulting in death. However, Public Prosecutor argues that he was a member of unlawful assembly whose common object was to commit murder. Assemblage of persons had taken place on the exhortation of the leader to file nomination papers at all cost. The object of the assembly being such it is debatable whether it could be defined as an unlawful one from the outset.

5. We are not unmindful of the fact that a lawful assemblage of persons may turn unlawful due to the activities of its members. The stage and circumstances in which this change takes place is a matter to be decided in the facts of each case. In the present case, assemblage of persons at the outset was not unlawful. Hence, membership without anything more may not be sufficient to foist constructive liability on the petitioner. It is also relevant to note petitioner has not been cited as an accused in the other cases of similar nature which occurred on that day.

6. Under such circumstances in view of the extent of involvement of the petitioner in the crime, we are of the opinion the issue whether he was a member of unlawful assembly and had shared its common object requires to be assessed in the backdrop of attending circumstances during trial. Petitioner has no criminal antecedent. He has permanent home and hearth and there is no chance of abscondence.

7. Hence, we are inclined to grant bail to the petitioner subject to strict conditions.

8. Accordingly, the petitioner viz., **Jahangir Mali** 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 Additional Chief Judicial Magistrate, Baruipur, South 24-Paraganas subject to condition that he 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 and on

further condition that the petitioner while on bail shall not enter the jurisdiction of Kashipur Police Station except for the purpose of court proceeding and shall provide the address where he shall reside to the Investigating Officer as well as the court below and report to the Officer-in-charge of the Police Station concerned within whose jurisdiction he shall reside once in a week until further orders.

9. Mobile number used by the petitioner while on bail shall be intimated to the investigating agency for necessary surveillance.

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

11. This application for bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)