

08.04.2024  
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allowed

CRM (DB) No. 1030 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Daulatabad Police Station Case No. 256 of 2020 dated 11.12.2020 under Sections 376/302 of the Indian Penal Code and subsequently charge-sheet submitted under Sections 376A/302/201 of the Indian Penal Code

And  
In Re : Md. Abul Hasan @ Abul Hasan ..... petitioner

Mr. Arnab Chatterjee  
....for the petitioner

Mr. Debasish Roy, learned PP  
Ms. Kanchan Roy  
.... for the State

1. Learned Counsel for the petitioner submits he is in custody for three years and three months. It is also submitted there is no direct evidence connecting him with the crime. Prosecution witness who made statement before police that he had seen the petitioner and the victim together has not supported the case. Under such circumstances he prays for bail.

2. Learned Public Prosecutor opposes the bail prayer and submits DNA report shows bodily fluids of the petitioner in the under-garments of the deceased.

3. We have considered the materials on record. Case is based on circumstantial evidence. One of the vital circumstance is that the petitioner was last seen with the victim. A witness who made statement before police to that effect has not supported the prosecution case in Court. In view of such development,

prosecution primarily relies on the forensic report to show bodily fluids of the petitioner were found in the under-garments of the petitioner. Whether the chain of custody of the samples is established manner of the DNA profiling was conducted as per protocol requires to be examined during trial. There is no possibility of winning over the official witnesses who may prove this fact. In view of the aforesaid facts and the protracted period of detention suffered by the petitioner, we are inclined to grant bail to him.

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, Berhampore, Murshidbad, 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.

**(Prasenjit Biswas, J.)**

**(Joymalya Bagchi, J.)**