

11.06.2024
Item no.30.
Court No.28.
S. De
(Allowed)

CRM (DB) No. 1589 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 13.05.2024 in connection with Nowda Police Station Case No. 148 of 2023 dated 04.05.2023 under Sections 302/34 of the Indian Penal Code.

And

In the matter of : Kutubuddin Molla.

.....Petitioner.

Mr. Ayan Bose,
Mr. Asraf Mondal,
Mr. Sumit Routh,for the Petitioner.

Mr. Somnath Adhikary,
.....for the de-facto complainant.

Mr. Bitashok Banerjee,
Mr. Atanu Ghosh, ...for the State.

The allegation is that there was a fight between the brothers. The petitioner, being the younger brother, beat his elder brother to death with a bamboo stick.

The petitioner says that the charge of murder will not lie. There was no pre-meditated act on the part of the petitioner. There was a quarrel between two brothers concerning joint property. In the heat of the moment, the petitioner dealt blows on the elder brother which caused his death. He is in custody for seven months and twenty five days. Investigation is complete. Charge-sheet has been filed. No useful purpose will be served by keeping him in custody.

Learned advocates for the State as also for the de facto complainant being the wife of the deceased victim, strongly oppose the prayer for bail. The case diary is produced. Our attention has been drawn to statements of eye witnesses recorded under Sections 164 and 161 of the Code of Criminal Procedure. Learned advocates say that their apprehension is that if the petitioner is enlarged on bail, he will tamper with evidence and intimidate the material witnesses thereby jeopardizing the trial.

We have considered the facts and circumstances of the case and the material on record. Prima facie, it appears that the petitioner caused the death of his elder brother. However, from the circumstances of the case, it cannot be ruled out that there was no pre-meditated act on the part of the petitioner and the alleged offence was committed by him in the heat of the moment.

Since investigation is complete and charge-sheet has been filed, no useful purpose will be served by further detaining the petitioner in custody.

Accordingly, we direct that the petitioner, namely **Kutubuddin Molla** 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, Murshidabad, Beharampur and on further conditions that he shall remain outside the Murshidabad district till the recording of evidence is over. He shall also furnish to the learned Trial Court the address where he will be residing.

The 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 and/or commit any cognizable offence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)