

64.
Court
No.28

09.07.2024

(Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (DB) 1929 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with **Saktipur Police Station Case No.257 of 2023** dated **09.11.2023** under Sections **341/326/307/302/354/34** of the Indian Penal Code, 1860.

And
In the matter of: - **Mohosen @ Mohosin Sk.**

...petitioner.

Mr. Milon Mukherjee, Ld. Sr. Adv.,
Mr. Mazhar Hossain Chowdhury, Adv.

...for the petitioner.

Ms. Sreyashi Biswas, Adv.,
Mr. Samarjit Balial, Adv.

...for the State.

Mr. Manjit Singh, Adv.,
Mr. Mobaidur Hossain, Adv.

...for the *de facto* complainant.

Order dictated in open Court by Apurba Sinha Ray, J.

Learned Senior Counsel for the petitioner submits that the petitioner has been falsely implicated in this case. Though the petitioner did not give fatal blow or was not present at the place of occurrence, he was falsely entangled in this case. The FIR does not contain his name. Only on the basis of statement of one Minarul Mullick, recorded under Section 164 of the Code of Criminal Procedure, 1973, long after two months of lodging of FIR, he was arrested. Learned Senior Counsel has also referred to the statements of some other witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, where the petitioner’s name does not transpire. Learned Counsel submits that as the investigation is complete, he may be enlarged on bail on any condition that this Court may decide.

Learned Counsel appearing for the State has raised strong objection against the bail prayer. According to her, the bail prayer of an accused, who is standing on the same footing, was rejected by a co-ordinate Bench of this Court. Learned Counsel has also referred to several pages in the case diary to show the complicity of the petitioner in the alleged offence.

Learned Counsel appearing for the *de facto* complainant has also raised strong objection.

We have gone through the material in the case diary. It appears from the statement recorded under Section 164 Cr.PC, that all the accused persons had assaulted the victim with wooden sticks and iron rods. But only one stick and one iron rod were recovered. It is also found that the fatal blow was not given by the petitioner.

On an overall assessment of the material in the case diary and considering that investigation is complete we are inclined to allow the petitioner's prayer for bail but on stringent conditions:

Accordingly, we direct that the petitioner, namely, **Mohosen @ Mohosin Sk.**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Murshidabad at Berhampore, subject to condition that –

- 1) The petitioner shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the

witnesses and/or tamper with evidence in any manner whatsoever.

- 2) The petitioner shall not leave the territorial limits of the district of Murshidabad, till conclusion of trial unless such conditions have been relaxed by the Trial Court.
- 3) The petitioner shall furnish the present address where he will be residing to the Officer-in-charge of the jurisdictional Police Station immediately after being released on bail and shall also appear before the Officer-in-Charge of the jurisdictional Police station, where he will be residing, once in every week until further orders.

In the event the petitioner fails to adhere to any of the conditions stipulated above without any 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 being CRM (DB) 1929 of 2024 is accordingly disposed of.

Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)