

02.01.2024
Item No.86
Ct. No. 29
CHC
Rejected

C.R.M.(A) 4340 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Pukhuria** Police Station Case No. **03/2021** dated **04.01.2021** under Sections **341/326/307/427/34** of the Indian Penal Code, 1860 read with Sections **25/27/35** of the Arms Act.

And

In the matter of : Md. Mohabbat Ali @ Mahabbat Ali
@ Md. Mohabbat Ali
..... petitioner

Mr. Milon Mukherjee, Sr. Advocate
Mr. Subhadeep Ghosh
....for the petitioner

Mr. Saibal Bapuli, Ld. A.P.P.
Mr. Arani Bhattacharyya
....for the State

The petition is taken up for consideration subsequent to the order dated October 16, 2023.

By such order, the coordinate Bench granted interim anticipatory bail to the petitioner.

It is submitted at the bar that, such order was passed without consulting the materials in the Case Diary and in view of the ensuing Puja Vacation.

Learned Senior Advocate appearing for the petitioner submits that, police filed charge-sheet and therefore, custodial interrogation of the petitioner is not required.

Moreover, there the injured suffered one bullet injury that too at the hand and therefore, provisions of Section 307 of the Indian Penal Code, 1860 are not attracted. Moreover, since the injured named another person as the assailant firing the firearm, petitioner should be enlarged on anticipatory bail.

Learned advocate appearing for the State draws the attention of the Court to the materials in the Case Diary including the statement recorded by the injured under Section 164 of the Criminal Procedure Code.

The injured suffered bullet injury on his hand.

He recorded his statement under Section 164 of the Criminal Procedure Code where, he stated that the persons carried firearms including the petitioner before us. He named one of the persons as the assailant who fired a firearm resulting in the injury caused to him.

The petitioner before us was a member of the unlawful assembly of persons during the incident. The petitioner was carrying a firearm as appearing from the statement of the victim recorded under Section 164 of the Criminal Procedure Code.

We are unable to subscribe the view that provisions of Section 307 of the Indian Penal Code, 1860 are not attracted in the facts and circumstances of the present case.

Considering the gravity of the offence and involvement of the petitioner in the incident as transpiring from the materials in the Case Diary we are unable to extend the interim order of anticipatory bail granted to the petitioner or grant anticipatory bail to the petitioner.

This application for anticipatory bail is, thus, rejected.

CRM(A) 4340 of 2023 is disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)