

04.01.2024.
18.
Ct.No.28
as
(Allowed)

C.R.M. (DB) 4527 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Chakulia P. S. Case No.178 of 2023 dated 09.07.2023 under Sections 143/324/325/326/307/302 of the Indian Penal Code and adding Sections 149/171F of the Indian Penal Code and Sections 132/135/135A of Representatives of People's Act.

In the matter of : **Mir Md. Ashique @ Md. Ashique Alam & Ors.**

.... Petitioners.

Mr. Sekhar Kr. Basu, Id. Sr. Adv.,
Mr. Diptangshu Basu.
Ms. Suchismita Dutta,
Ms. Pranidhi Singh

...for the Petitioners.

Mr. Debasish Roy, Id. P.P.,
Mr. Rudradipta Nandy, Id. A.P.P.,
Mr. Saryati Dutta.

...for the State.

Mr. Mujibar Ali Naskar,
Md. Habibur Rahman.

...for the de-facto complainant.

1. Petitioners submit there was a fight between two political groups. Both the parties suffered injuries. It is contended though criminal case was registered against the petitioners and their associates, no steps were taken to register the counter case. Subsequently, on direction of Magistrate under Section 156(3) of the Code of Criminal Procedure, Chakulia Police Station Case No.235 of 2023 dated 01.09.2023 under Sections 147/148/149/323/326/307/34 of the Indian Penal Code and under Sections 3/ 4 of the Explosive Substances Act came to be registered. Petitioner Nos.1 to 5 are in custody for more

than 170 days, petitioner Nos.6 and 7 are in custody for 106 and 135 days respectively. Accordingly, they pray for bail.

2. Learned Advocate for State produces the case diaries of both the cases. He contends petitioners had assaulted the victims, one of whom died.

3. Learned Advocate for de-facto complainant also opposes the bail prayer. He contends complainant and his associates had not been arrested at the spot. A counter case was belatedly registered.

4. We have considered the materials on record in light of the submissions made at the Bar. Sufficient explanation with regard to delay in registering the counter case has been offered. It is contended the police authorities acted in a partison manner and only upon direction of the Magistrate, the counter case came to be registered. That apart, materials collected in course of investigation show grievous injuries suffered by petitioner Nos.1, 2, 3 and 5. Presence of injuries at both ends support the defence version of a free fight between the parties. Materials on record show there was a free fight and injuries were suffered by both the parties. Under such grievous circumstances, it cannot be said with reasonable assurance that members of the unlawful assembly shared the common object to murder the victim. It is alleged all the petitioners participated in the assault. No specific accusation that individual act of any of the petitioners resulted in death is evident from the facts.

5. Under such circumstances and in view of the fact that investigation is complete and there is no chance of abscondence, we are inclined to grant bail to the petitioners subject to strict conditions.

6. Accordingly, the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Islampur, Uttar Dinajpur subject to condition that they 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 petitioners while on bail shall not enter the jurisdiction of Chakulia 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 they shall reside once in a week until further orders.

7. In the event the petitioners fail to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

8. The application for bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

