

29.04.2024
Sl. Nos.12 & 13
sdas
rejected

C. R. M. (DB) 4533 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Sessions Case No.104 (02) 2022 arising out of CBI-SCB-Kolkata No. RC056S20210011/2021 dated 25.08.2021 corresponding to Kotwali Police Station Case No. 562 of 2021 dated 14.06.2021 under Sections 143/144/147/148/149/302/427/448/449/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

And

In Re: ***Appu Mukherjee @ Babusona & Ors.***
... .. Petitioners

Mr. Soubhik Mitter
Mr. Litan Maitra
Ms. Rajnandini Das
Mr. Chirak Biswas
... .. for the petitioner

Mr. Dhiraj Trivedi .. Id. Dy. Solicitor General of India
Mr. Amajit De
... .. for the CBI

W I T H

C. R. M. (DB) 403 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with RC056S20210011 dated 25.08.2021 corresponding to Kotwali Police Station Case No. 562 of 2021 dated 14.06.2021 under Sections 143/144/147/148/149/302/427/448/449/34 of the Indian Penal Code and Sections 25/27 of the Arms Act. (G.R. Case No.468 of 2022)

And

In Re: ***Ananda Sarkar***
... .. Petitioner

Mr. Sabir Ahmed
Mr. Abdur Rakib
Ms. Suman Biswas
... .. for the petitioners

Mr. Kallol Mondal
Mr. Sagar Saha
... .. for the CBI

In Re : C. R. M. (DB) 4533 of 2023

1. Learned Counsel for the petitioners submit they are in custody for two years and eight months. It is also submitted CBI has approached the Hon'ble Apex Court in Transfer Petition (Criminal) Diary No. 51357 of 2023 for transfer of a number of proceedings including the present one. Order of stay has been passed. As a result there is no possibility of trial concluding in the near future. Prosecution witnesses examined till date had made general and omnibus allegations against the petitioners. They are not the principal offenders who shot the victim. There is no allegation of misuse of liberty. Accordingly, they pray for bail.

2. In view of the aforesaid submissions made on behalf of the petitioners we called for report from CBI with regard to status of the proceeding before the Hon'ble Apex Court and the timeline within which they propose to conclude the trial. Report with regard to threats held out by the accused upon witnesses was also directed to be placed on record. In response thereto reports have been filed by the CBI. Reports show three prosecution witnesses viz. the wife and two daughters of the deceased have been examined. Other eye-witnesses are yet to be examined. Transfer proceedings before the Hon'ble Apex Court have been directed to be relisted after Summer Vacation i.e. July, 2024.

3. We have considered the materials on record. Present case is one of those which arose due to violence unleashed in the State immediately after the Assembly Election in 2021. Pursuant to direction given by a Bench of this Court all matters including the present one were transferred to CBI. Trial has commenced. Three witnesses have been examined. They are the mother and two daughters of the deceased. These witnesses state that the petitioners came in a body

being variously armed. They ransacked the house, assaulted and dragged the victim out of the house. Thereafter one Kusai Das and Pappu Mukherjee shot the victim. Post mortem report indicates apart from gunshot injury there are abrasion wounds all over the face of the deceased. These injuries noted in the post mortem report support a case of mob lynching before murder and corroborates the genesis of the incident narrated by the eye-witnesses. It is strenuously argued the deceased died due to gunshot injury which is not attributed to the petitioners. Prosecution case against the petitioners is one of constructive liability under Section 149 of the Indian Penal Code. In a charge involving Section 149 of the Indian Penal Code prosecutor need not prove the individual act of every accused. Membership of the unlawful assembly and sharing of common object, that is, to murder the victim is sufficient to bring charge. We choose not to make further comment in this regard lest it may prejudice the trial.

4. We are conscious that the accused are in custody for two years and eight months. Proceedings have been stayed by the Hon'ble Apex Court. Ordinarily, these factors may have prompted this Court to consider bail prayer of the petitioners favourably. But, notings by the trial Judge with regard to demeanor of the wife of the deceased, PW 1 while deposing in court exposes the sceptre of cold terror which the petitioner and other accused generate in her mind. For better appreciation we quote the observation of the trial Judge:-

“At this stage it appears to this Court that this witness got frighten (sic) and when this Court ask (sic) about (sic) show hesitatedly (sic) she replied in affirmative, as such this Court use (sic) a curtain to avoid any direct contact of the accused persons with this witness as available in this Court”.

5. This has weighed heavily on us and we apprehend in the event the petitioners are released on bail it would cause severe trauma and endanger the safety and security of the family members of the deceased including other eye-witnesses who are yet to be examined. In order to instill confidence in the mind of these witnesses we are not inclined to enlarge the petitioners on bail at present. Petitioners may be at liberty to pray for bail in the event there is change in the circumstance in future.

6. Petitioners are at liberty to pray for vacating and/or variation of the stay order before the Hon'ble Apex Court in Transfer Petition (Criminal) Diary No. 51357 of 2023 if so advised.

7. With these observations, the application for bail is, thus, rejected.

In Re : C. R. M. (DB) 403 of 2024

8. Learned Counsel for the petitioner submits he is in custody for two years and eight months. It is also submitted CBI has approached the Hon'ble Apex Court in Transfer Petition (Criminal) Diary No. 51357 of 2023 for transfer of a number of proceedings including the present one. Order of stay has been passed. As a result there is no possibility of trial concluding in the near future. Petitioner was not named in the FIR. Prosecution witnesses examined till date had made general and omnibus allegations against the petitioner. He is not the principal offender who shot the victim. There is no allegation of misuse of liberty. Accordingly, they pray for bail.

9. In view of the aforesaid submissions made on behalf of the petitioner we called for report from CBI with regard to status of the proceeding before the Hon'ble Apex Court and the timeline within which

they propose to conclude the trial. Report with regard to threats held out by the accused upon witnesses was also directed to be placed on record. In response thereto reports have been filed by the CBI. Reports show three prosecution witnesses viz. the wife and two daughters of the deceased have been examined. Other eye-witnesses are yet to be examined. Transfer proceedings before the Hon'ble Apex Court have been directed to be relisted after Summer Vacation i.e. July, 2024.

10. We have considered the materials on record. Present case is one of those which arose due to violence unleashed in the State immediately after the Assembly Election in 2021. Pursuant to direction given by a Bench of this Court all matters including the present one were transferred to CBI. Trial has commenced. Three witnesses have been examined. They are the mother and two daughters of the deceased. These witnesses state that the petitioner and others came in a body being variously armed. They ransacked the house, assaulted and dragged the victim out of the house. Thereafter one Kusai Das and Pappu Mukherjee shot the victim. Post mortem report indicates apart from gunshot injury there are abrasion wounds all over the face of the deceased. These injuries noted in the post mortem report support a case of mob lynching before murder and corroborates the genesis of the incident narrated by the eye-witnesses. It is strenuously argued the deceased died due to gunshot injury which is not attributed to the petitioner. Prosecution case against the petitioner is one of constructive liability under Section 149 of the Indian Penal Code. In a charge involving Section 149 of the Indian Penal Code prosecutor need not prove the individual act of every accused. Membership of the unlawful assembly and sharing of common object, that is, to murder the victim is sufficient to bring charge. Though petitioner was not named in the FIR,

statement of the eye-witnesses before the learned Magistrate implicated him. PW 1 has identified the petitioner by face but was too afraid to name him. PW 3, her daughter, has named the petitioner as member of the unlawful assembly who had dragged her father from the house whereupon he was murdered. We choose not to make further comment in this regard lest it may prejudice the trial.

11. We are conscious that the accused are in custody for two years and eight months. Proceedings have been stayed by the Hon'ble Apex Court. Ordinarily, these factors may have prompted this Court to consider bail prayer of the petitioner favourably. But, notings by the trial Judge with regard to demeanor of the wife of the deceased, PW 1 while deposing in court exposes the sceptre of cold terror which the petitioner and other accused generate in her mind. For better appreciation we quote the observation of the trial Judge:-

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12. This has weighed heavily on us and we apprehend in the event the petitioner is released on bail it would cause severe trauma and endanger the safety and security of the family members of the deceased including other eye-witnesses who are yet to be examined. In order to instill confidence in the mind of these witnesses we are not inclined to enlarge the petitioner on bail at present. Petitioner may be at liberty to pray for bail in the event there is change in the circumstance in future.

13. Petitioner is at liberty to pray for vacating and/or variation of the stay order before the Hon'ble Apex Court in Transfer Petition (Criminal) Diary No. 51357 of 2023 if so advised.

14. With these observations, the application for bail is, thus, rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)