

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

05.01.2024
JPD 8
Sws.M
ct.1

C.R.M. (DB) 5 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Police Station Case No. 584 of 2023 dated 19.10.2023 under Sections 341/323/326/307/354/34 of the Indian Penal Code, 1860.

Allowed

In the matter of : **Kachua Miah @ Kachuya Mia
@ Kachhuua Mia**

..... Petitioner

Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal

...for the Petitioner

Mr. Aditi Sankar Chakraborty
Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee

...for the State

Mr. Satyajit Paul

...for the Victim

Heard Mr. Arjun Chowdhury, learned counsel for the petitioner and Mr. Tapan Bhattacharjee, learned State Advocate for the opposite party.

Learned counsel for the petitioner submits that the petitioner is the father of the injured victim and also the father of the accused. In fact, some scuffle took place between his two sons in which his son, Jalil Miah received some injuries as per FIR No. 584 of 2023 dated 19.10.2023 under Section 341/323/326/307/354/34 of IPC, Police Station – Dinhata, District- Cooch Behar. In respect of the

same incident, a cross FIR No. 585 of 2023 dated 20.10.2023 was lodged by Fatema Khatun (wife of the other son) making allegations against the injured person, namely, Pinki Bibi (wife of Jalil Mian) and Bable Miah. He submits that out of 8 accused persons of FIR No. 584 of 2023, 5 accused persons were granted anticipatory bail by an order dated 02.12.2023 in bail petition No. 1854 of 2023 passed by the Sessions Judge, Cooch Behar. The petitioner herein is languishing in jail since 12.12.2023. He submits that the petitioner is an innocent person and he has been falsely implicated by his son.

Learned State advocate submits that the petitioner was specifically named in the FIR and a specific role of beating by iron rod has been assigned to him and in the statement recorded under Section 164 Cr.P.C. the injured victim has stated that the petitioner has beaten with bamboo stick and on his instigation the other accused Atikul Miah (the other son of the petitioner and the real brother of the injured person) beaten him and attacked on him with weapon on the head causing grievous injury. He, therefore, submits that bail petition of the petitioner deserves to be rejected in as much as the petitioner was involved in the commission of crime and substantial evidence against him are available to prove his guilt.

We have heard learned counsel for the parties and carefully considered their submissions and also perused the Case Diary as produced by the learned State advocate.

We find that the FIR in question, i.e. the aforesaid FIR No. 584 of 2023 dated 09.10.2023 was lodged by the injured victim, namely, Pinki Bibi, against 8 accused persons, out of which 5 accused persons have been granted anticipatory bail by the above referred order dated 02.12.2023 in Bail Petition No. 1854 of 2023 passed by the Sessions Judge, Cooch Behar. The anticipatory bail petition of the present petitioner (accused No. 2 in the FIR) was rejected by the aforesaid order dated 02.12.2023 passed in the Bail Petition No. 1854 of 2023. Cross FIR No. 585 of 2023, as above mentioned, was lodged by one Fatema Khatun (wife of the other son of the petitioner) against the injured victim, his wife Pinki Bibi and another person, namely, Bable Miah under Sections 431/323/354/ 379/506/ 34 of IPC. As per FIR No. 584 of 2023, the main role causing grievous injury has been assigned to the other son of the petitioner, namely, Atikul Miah. The role assigned to the petitioner is the beating to the injured victim and instigation. As per statement of the injured victim recorded under Section 164 Cr.P.C., the role assigned to the petitioner herein is beating by bamboo stick and thereafter instigating the other son, Atikul Miah to beat the injured victim and thereby the other son caused grievous injury to the injured victim. Thus, prima facie the role

assigned to the petitioner in the FIR as well as in the statement recorded under Section 164 Cr.P.C. is mainly of beating the injured victim by bamboo stick. Prima facie the injury was mainly caused to the injured victim by the accused No. 1, Atikul Miah. The injured victim and the accused no. 1, Atikul Miah are both the sons of the petitioner herein. It has been stated by learned counsel for the petitioner before us that there was dispute between both the sons with respect to the distribution of property belonging to the petitioner herein and only for the cause of property, the petitioner herein has been falsely implicated by his daughter-in-law, i.e. the wife of the injured victim, so as to exert pressure for getting the property.

Learned State advocate states on instruction that custodial interrogation of the petitioner herein has been completed but charge-sheet is yet to be filed.

Considering the facts and circumstances of the case, the statement of injured victim recorded under Section 164 Cr.P.C., the contents of the FIR and the Cross FIR and without commenting on merits of the case, we find it a fit case to enlarge the petitioner on bail.

In view of the aforesaid, the petitioner/accused, **Kachua Miah @ Kachuya Mia @ Kachhuua Mia** is enlarged on bail on furnishing a personal bond and 2 sureties of Rs.10,000/- each to the satisfaction of the concerned Court, subject to the following conditions:-

- (i) The petitioner shall not in any way influence the witnesses or try to delay the conclusion of trial.
- (ii) The petitioner shall remain personally present before the learned Trial Court on each day when witnesses are produced for examination and shall not seek any adjournment on such date.
- (iii) The petitioner shall not misuse liberty of bail in any way.
- (iv) The petitioner shall remain personally present for a statement under Section 313 Cr.P.C.
- (v) At least one surety offered by the petitioner as aforesaid, shall be a local resident.
- (vi) The petitioner shall not leave India without leave of the Court.

On furnishing of the personal bond and the surety by the petitioner as aforesaid, the petitioner shall be released on bail forthwith.

The application being **CRM (DB) 5 of 2024** is **allowed**.

Urgent certified copy of this order, if applied for, be supplied to the learned counsel for the respective parties.

(Rai Chattopadhyay, J.)

(Surya Prakash Kesarwani, J.)