

05.12.2024  
SL No.2  
srm/Mujahid  
(Rejected)

**Calcutta High Court  
In The Circuit Bench at Jalpaiguri**

**C.R.M. (DB) 581 of 2024**

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973/Section 483 of the B.N.S.S. 2023 filed on **05.11.2024** in connection with **Birpara** P.S. Case No. **116/2023** dated **24.08.2023** under Sections 363/364/365/302/201/120B of the Indian Penal Code.

And

In the matter of: **Raja Sah**

....Petitioner

Mr. Suman Sehanabis Mondal,  
Mr. Arnab Saha

...for the petitioner

Mr. Aditi Shankar Chakraborty,  
Dr. Arjun Chowdhury

...for the State

Learned Advocate representing the petitioner submits that the petitioner is suffering from various ailments including tuberculosis. 20 witnesses have been cited in the charge-sheet. There is a counter case also. Some of the witnesses are the accused in the said counter case. They are absconding. There is a remote possibility of early conclusion of the trial. In the circumstances, bail should be given to the petitioner.

Learned Additional Public Prosecutor produces the case diary and vehemently opposes the prayer for bail. He submits that the prosecution has been able to collect some documents from which direct involvement of the petitioner in the offence has been substantiated. He further submits that trial has commenced and at this stage it would not be proper to enlarge

the petitioner on bail. In support of such contention he relies upon a judgment of the Hon'ble Apex Court in the matter of **X vs. State of Rajasthan & anr.** reported in **2024/INSC/902**.

In reply, learned Advocate representing the petitioner invites our attention to the deposition of PW3 and submits that the PW3 is the star witness of the prosecution and from his deposition it could never be ascertained by any prudent man that the petitioner was involved in the alleged offence. She also drew our attention to an order passed by a coordinate Bench of this Court in CRM (DB) 671 of 2024 in an effort to impress upon us that two co-accused persons had been released on bail by that order.

Learned Additional Public Prosecutor also files a report with regard to the present health condition of the petitioner and it is found that the petitioner has been cured of tuberculosis.

Heard learned Advocates for the respective parties. Perused the case diary and other materials placed before us. The evidence collected by the prosecution, prima facie, suggest that the petitioner was present at the scene of crime, when the offence was allegedly committed. Out of 20 witnesses, 9 witnesses have been examined. This is a case under Section 302, IPC. At this stage, it would not be proper to arrive at a conclusion that the prosecution has miserably failed to bring any cogent evidence against the accused person/petitioner. The points taken by the petitioner shall be available at the trial.

Trial has commenced and we have carefully gone through the order passed by the learned coordinate Bench and the persons in whose favour the privilege of bail had been extended, were not on the same footing.

Taking note of these facts, we are not inclined to entertain this application for bail at this stage and accordingly the same is rejected.

The medical facilities available at the correctional home shall be extended to the petitioner.

**(Partha Sarathi Chatterjee, J.)**

**(Shampa Sarkar, J.)**