

Circuit Bench of Calcutta High Court At Jalpaiguri
CRM (DB) 674 of 2023

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Maynaguri Police Station** Case No. **305 of 2023** dated **08.08.2023** under Sections **498A/304/34** of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act.

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In the matter of : Khitish Roy & Anr.

.... Petitioners.

Mr. Jaydee Kanta Bhowmik
Ms. Debi Sarkar,
Mr. Sayantan Bhowmik,
Ms. Rikta Sarkar,

... For the Petitioners.

Mr. Nilay Chakraborty,
Mr. Tapan Bhattacharjee,

... For the State.

Heard Mr. Jaydeep Kanta Bhowmik, learned Counsel for the petitioners and Sri Nilay Chakraborty, learned Senior Government Counsel for the State.

This bail application has been filed on behalf of the petitioners under Sections 439 of the Code of Criminal Procedure in FIR/Case Crime No. 305 of 2023 dated 08.08.2023 under Sections 498A/604/34 IPC and Sections 3/4 of the Dowry Prohibition Act, 1961, PS-Maynaguri, District-Jalpaiguri.

The petitioner no. 1 is the father in law and the petitioner no. 2 is the husband of the deceased, Priyanka Roy. Case diary has been produced by the learned Senior Government Counsel. He has also produced the report of the Department of pathology, North

Bengal Medical Collage, Sushrutanagar, Darjeeling, which has been submitted pursuant to the order dated 06.12.2023 passed by this Court. The report so produced by learned Senior Government Counsel shall be returned to him after retaining the Photostat copy thereof on record.

Learned Counsel for the petitioners submits that the petitioners have been falsely implicated, the death of the deceased was not caused by them rather she died on account of some complication during pregnancy period, no injury was caused by the petitioners to the deceased and dowry was never demanded. He submits that all these facts are supported by the post mortem report as well as the report dated 22.12.2023 submitted by the Department of Pathology. He further submits that the informant is Malini Ray, who is the mother of the deceased and in the First Information Report, although she made some allegation of demand of dowry but in her statement recorded under Section 164 Cr. P.C. dated 11.08.2023 before the Judicial Magistrate, she has not made any such allegation and has simply stated that she gave a phone call to her daughter at 10.30 p.m. on 07.08.2023 and on getting the information of her illness, she came and thereafter she, the husband of the deceased and the sister carried the deceased to the hospital where she was declared dead. He, therefore, submits that even the FIR version is not supported by the statement of the informant i.e., the mother of the deceased recorded on 11.08.2023 and there is no allegation in the statement under Section 164 that

the petitioners have either beaten or caused death of the deceased or demanded any dowry.

Learned Senior Government Counsel produced the case diary which contains the statement of the informant recorded under Section 164 Cr. P. C. as well as copy of the charge-sheet. He does not dispute the submission of learned Counsel for the petitioners with regard to the post mortem report and the statement of the mother of the deceased recorded under Section 164 Cr. P.C. He, however, submits that since the death has taken place within one year, therefore, the petitioners may not be enlarged on bail and the application for bail of the petitioners may be rejected.

We have carefully considered the submissions of learned Counsel for the parties and perused the case diary and the post mortem report which does not indicate any sign of external or internal injury on the body of the deceased.

Considering the submissions of learned Counsel for the parties, the statement of the mother of the deceased recorded under Section 164 Cr. P. C., the FIR version, the post mortem report and the report of the Pathology Department dated 22.12.2023 submitted before this Court through the Government Counsel and also the fact that one of the co-accused, namely, Silameswari Roy @ Chhilameswari Roy (mother in law of the deceased) and without commenting any further on merits of the case of the petitioners/accused, prima facie we find that the petitioners have made out case for grant of bail.

In view of the aforesaid, the petitioner no. 1, namely, **Khitish Roy**, son of late Helheb Roy, resident of Forest Ramsai, Ramsai Hat, P.S. Maynaguri, Dist.-Jalpaiguri and the petitioner no. 2, namely, **Biswadev Roy @ Biswadav**, son of Khitish Roy, resident of Forest Ramsai, Ramsai Hat, P.S. Maynaguri, Dist.-Jalpaiguri in connection with Maynaguri Police Station Case No. 305 of 2023 dated 08.08.2023 under Sections 498A/304/34 IPC read with Sections 3/4 of Dowry Prohibition Act, are enlarged on bail on a person bond of Rs. 10,000/- each and two sureties by each of the petitioners, of Rs. 10,000/- each of the like amount, subject to the satisfaction of the concerned court and also subject to the following conditions:-

- (i) Both the petitioners shall not in any way influence the witnesses or try to delay the conclusion of trial.
- (ii) Both the petitioners 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) Both the petitioners shall not misuse liberty of bail in any way.
- (iv) Both the petitioners shall remain personally present for a statement under Section 313 Cr. P.C.
- (v) At least one surety offered by the each of the petitioners as aforesaid, shall be a local resident.
- (vi) Both the petitioners shall not leave India without leave of the Court.

On furnishing of the personal bond and the sureties by each of the petitioners as aforesaid, both the petitioners shall be released on bail forthwith.

The application for bail being No. CRM (DB) 674 of 2023 is disposed of.

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

(Surya Prakash Kesarwani, J.)

(Rai Chattopadhyay, J.)