

06.02.2025
Item no. 12.
Court No.29.
AB
(Rejected)

CRM (DB) 3419 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure, 1973/Under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Serampore P.S. Case No.406 of 2015 Dated 29.08.2015 under Sections 302 /201 of the Indian Penal Code

And

In the matter of : Samaresh Sarkar

.....Petitioner.

Mr. Sumanta Ganguly,
Mr. Dibakar Sardarfor the Petitioner.

Mr. Rudradipta Nandy, Id. APP
Ms. Suruchi Sahafor the State.

Dictated by Apurba Sinha Ray, J.

1. The petitioner claims that he is innocent and has been falsely implicated in this case. According to him, this case is based on circumstantial evidence only. The deadbody of a female person was not properly identified since it was found beheaded. Learned Counsel of the petitioner has also pointed out that there are several discrepancies in the evidence and there is a fair chance of his acquittal. He has submitted one written note along with copies of depositions of 38 witnesses and the examination of the petitioner under Section 313 Cr.P.C.

2. Learned Counsel has also pointed out that on each and every date, the concerned Investigating Officer was present at the time of examination of witnesses before the learned Trial Court. He has further submitted that the petitioner has been

languishing in judicial custody for more than nine years and five months. The prosecution was unable to respect the timeframe fixed by this Court twice and there is no chance of an early conclusion of the trial since the prosecution has taken time at least on three occasions when the case was fixed for argument.

3. Learned Counsel has also pointed out that there is no direct evidence to show that the petitioner has committed the offence.

4. Learned Counsel for the State opposes the prayer for bail. According to him, there are sufficient incriminating materials against the present petitioner. 38 witnesses have been examined in the trial and he has given instruction to the concerned Public Prosecutor to complete the argument as early as possible. According to him, the evidence on record does not support the contention of the learned Counsel for the petitioner.

5. We have considered the rival contentions of the parties. We do not agree that this is a case of only circumstantial evidence. This case has certain peculiarities. According to us, this case is a combination of circumstantial evidence as well as direct evidence. The factual aspect of the instant case shows that on 29.08.2015 a person was coming from Barrackpore Manirampur Ghat with three suitcases, trolley bags etc. along with a side bag in a boat and that boat was bound for Serampur Dhobi Ghat. In the midst of the journey, it was seen that the said person was dropping those bags in

the Ganges. The passengers raised hue and cry and being suspicious they handed over the petitioner to the concerned Police Personnel after being reached Srirampore Dhobi Ghat. The petitioner was apprehended and subsequently the said bags were recovered at different times. In one bag the lower portion of a female dead body from naval was found. Subsequently from another trolley bag the upper portion of the beheaded female body was recovered. Subsequently thereafter another bag was recovered wherefrom deadbody of a female child of five years was recovered. It is true that nobody saw the petitioner to commit the brutal murder of the victims, but he was apprehended at the time of dropping all the bags. There are witnesses who deposed in support of such factual aspects. Moreover, there are depositions of witnesses indicating the trolley bags were purchased at the instance of the present petitioner. The deposition of husband of the alleged victim, Sucheta Chakraborty, shows that he has identified the body of his wife not only seeing the four finger rings in the hand of the victim but also indicating the black mole under the naval of the deceased's body. Evidences are brought on record from questioned documents showing that 28 love letters were recovered from the almirah of the petitioner written by victim Sucheta Chakraborty and there are prima facie materials showing that the petitioner had access to said Sucheta Chakraborty. The intestine etc. of human bodies were recovered from the septic tank of the victim's house as per leading statement of the petitioner.

During his examination under Section 313 Cr.P.C. though the petitioner denied all the allegations but his statement that he was apprehended not at Dhobi Ghat in Srirampur but on the road of Srirampur on 29.08.2015, being an official working day, is also relevant, since he is under a duty to explain that he, being a bank manager, what was he doing or what was his purpose for visit on the road of Srirampur within whose close proximity the Dhobi Ghat is located.

6. It is settled law that the investigating officer should not only ensure the presence of all witnesses before the Learned Trial Court on relevant dates of their examination but he must also present himself at the time of trial. Therefore, the presence of investigating officer at the time of trial or at the time of examination of witnesses cannot be viewed with suspicion.

7. Therefore, whether all the evidences on record would raise confidence in the mind of the Learned Trial Court or not are matters of trial and this function has been reserved for the Learned Trial Court and not for us dealing with bail application under Section 439 of Cr.P.C.

8. As today is fixed for argument of this case, we are not inclined to allow the prayer for bail since 38 witnesses have already been examined and there were some witnesses whose examination, due to complexity of the case, spread over for 3/4 days. There was a voluminous papers relating to examination under Section 313 Cr.P.C. In this type of case, this is very difficult for anybody to argue the case either on

behalf of the prosecution or on behalf of the defence but as the petitioner is in judicial custody for more than nine years and five months, we expect that the learned Trial Court would certainly conclude the trial within this month by delivery of judgment.

9. The above observations made are all tentative and have no bearing upon the trial of the case and the learned Trial Court would proceed with the case and deliver the judgment without being influenced by any of the observations made in this order.

10. In short, given the gravity and nature of the alleged offence and availability of prima facie overwhelming evidence of the alleged crime, we are not inclined to entertain the prayer of the petitioner.

11. The prayer for bail stands rejected.

12. CRM (DB) 3419 of 2024 is dismissed.

13. Learned Registrar General of this Court shall communicate this order to the learned Trial Court forthwith.

14. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

