

CNR No: WBSP01-000587-2024

Present: Subhra Som Ghosal

J.O Code: WB00984

Special Case No: 02 of 2024

Order no.03 dated: 26-02-2024.

The case record has been put up today at the behest of the accused person namely Koushik Maity @ Kaushik Maity.

At this stage accused person namely **Koushik Maity @ Kaushik Maity** surrendered before this Court today and have filed a bail application. Vakalatnama has been filed on behalf of the accused person. Certain documents have also been filed along with the bail petition.

The Ld. Advocate for the de facto complainant is found to be present when the case record is called on for hearing.

On call Ld. Advocate for the accused person as well as the Ld. Public Prosecutor-in-charge are found to be present.

At this stage it is required to be mentioned that in this case notice was issued to the de facto complainant and he has appeared pursuant to such summon. Today the de facto complainant has also been duly represented and participated in the hearing. Hence the avowed object of giving fair chance of hearing to the de facto complainant as per section 15A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has been duly complied with. In view of such fact, I find no predicament in taking up the prayer for bail for hearing on this date. Hence the bail petition is taken up for hearing.

The Ld. Advocate for the accused person at the very exordium submitted that in this case the accused person is innocent and he has been implicated in this case in order to obfuscate the actual incident. Elaborating on this; it was argued by the Ld. Advocate for the accused person that on the date of the incident, this accused person was actually assaulted by the de facto complainant of this case but in order to evade from his criminal liability this case has been initiated by the de facto complainant taking recourse of Section 156 sub-section (3) of the Criminal Procedure Code 1973 and the allegations are totally falsely and so the accused person may be granted bail. It was further argued that the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has been misused by the de facto complainant through this proceeding and the personal liberty of the accused person may not be curtailed on basis of false allegations. It was further submitted that the accused person has complied with the notice under section 41A of the Criminal Procedure Code 1973 is ready to surrender to any condition which will be imposed by this court and will appear on each and every subsequent dates.

The Ld. Public Prosecutor-in-charge raised objection to such prayer.

The prayer was also opposed by the Ld. Advocate for the de facto complainant and it was argued that if the accused person is granted bail at this stage then the process of investigation will be reduced to mockery.

The CD has been produced. I have meticulously inspected the materials available in the CD.

At this stage the observations of the Hon'ble High Court made in **Sudip Mondal & Ors vs The State Of West Bengal & Anr [CRM (A) 2859 OF 2023]** are assuredly worthy of reproduction. The relevant part of the solemn order passed by the Hon'ble High Court runs in the following lines:

“25. Before proceeding to discuss the instant application for anticipatory bail on merit, we propose to lay down the gist of our discussion supra:

(i) The bar under Section 18 of the S.C. S.T. Act in respect of a petition for anticipatory bail under Section 438 Cr.P.C. is not absolute.

(i) (a) Such petition may be entertained and allowed in the event the court in session over the matter finds that no offence under the provisions of the S.C. S.T. Act is made out prima facie against the petitioner(s).

(ii) To find out the prima facie case no court should depend only on the F.I.R./complaint petition inasmuch as a meticulously drafted F.I.R./complaint petition may prejudice the accused and a casually drafted F.I.R. or complaint petition by a member of the S.C. S.T. community or on his/her instruction may prejudice the victim, if anticipatory bail is allowed

or denied on reaching a prima facie conclusion regarding existence or nonexistence of prima facie case covered by the provisions of the S.C. S.T. Act.

(ii) (a) In reaching the conclusion regarding existence or non-existence of prima facie case, the court should strive to go through the entire C.D. to find out the circumstances attending and following the transaction.

(iii) This court while declining to entertain a petition for anticipatory bail may direct the petitioner(s) to surrender before the competent Court and move petition under Section 439 Cr.P.C. In the event they surrender and move such petition, the competent court may also be directed to release them on interim bail if the offence committed by the accused is not heinous coupled with the offence enumerated in Section 3(1) of the S.C. S.T. Act.

(iii) (a) After hearing the Public Prosecutor/ Special Public Prosecutor regarding sufficiency of notice on the victim or his/her dependant as required under sub-Section 3 of Section 15A of S.C. S.T. Act, the petition for bail shall be taken up for final hearing for disposal on merit in accordance with law irrespective of the fact whether the victim or his/her dependant is present or not.

(iii) (b) When a persons surrenders to the jurisdiction of the competent court, it would be deemed that he has surrendered to the custody of the court and in that event a petition under Section 439 Cr.P.C. filed by him/her shall be competent and maintainable.

(iii) (c) In a petition under Section 439 Cr.P.C. the competent court should address the question of bail in the light of Article 21 of the Constitution of India as done in other offences not covered by provisions of S.C. S.T. Act. For offences covered under the S.C. S.T. Act same principle for bail should be adopted and applied. If offence is not heinous and especially an offence described under Section 3(1) of the S.C. S.T. Act interim bail as a rule should be granted awaiting sufficiency of notice under sub-Section 3 of Section 15A of the S.C. S.T. Act on the victim or his/her dependant.

(iii) (d) Though notice to the victim or his/her dependant is mandatory, their presence in the proceeding is not mandatory.”[emphasis supplied by me]

At the very outset it is required to be mentioned that the offence for which the accused person has been indicted is not heinous. Investigation is going on. At this stage I must also hasten to articulate that bail jurisprudence is firmly embedded in the Constitutional regime of fundamental rights and it is sanctified position of law that detention cannot be on the alter of surmise and conjecture. Definitely the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has recognized the right of the de facto complainant but that does not authorize this court to ignore the right of the accused person and doing this will amount to “re-calibrating the scales of justice”. The Hon'ble High Court in the decision mentioned supra has given specific direction as regards what should be the approach of this Court.

Definitely there cannot be any inexorable formula while considering a bail prayer, but it can be deciphered from the decisions of the Hon'ble Supreme Court that the most important considerations while authorizing detention at this stage should be whether fair probe/trial could be secured if the accused person is released on bail and whether the accused person, if admitted to bail; would appear to take his/her trial; and I think that in coming to a determination on those points three additional element in general has to be considered namely: the offence for which the accused person has been indicted i.e. gravity of the allegations, the nature of the evidence by which it is supported i.e. prima facie materials supporting such allegations and the punishment to which the accused person would be liable if convicted i.e. severity of punishment if found to be guilty.

As mentioned supra; the allegations as ventilated through the FIR does not appear to be heinous. The materials in the CD does not reveal any other ramification of the alleged offence, rather it has transpired that the basis of the incident remain a verbal spat between the parties. Given the nature of the case, juxtaposed with the fact that the accused person has joined the investigation and in absence of any specific allegations that the accused person is

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trying to intimidate the de facto complainant I find that scales are tilted in favour of the accused person. There is no materials in the CD to create even an allusion that the accused person has criminal propensity or that he will abscond if he is released on bail.

Hence considering every possible facet and based on the above delineations, the bail prayer is allowed. The accused person may find interim bail till next date on furnishing bond of Rs.2,000/- with two sureties of Rs.1000/- each till date to the satisfaction of the Ld. Chief Judicial Magistrate, South 24 parganas at Alipore i/d to J/C.

If on bail the accused person:

- (a) shall attend in accordance with the conditions of the bond executed as per this order,
- (b) shall not commit and/or indulge in any act similar to the offence for which he has been indicted in this case,
- (c) shall not directly or indirectly make any inducement, threat or promise to any person(s) acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

To date i.e. **12-03-2024** for appearance and final report.

Typed to the dictation directly;
corrected on the system.

Sd/-Subhra Som Ghosal
Additional District and Sessions Judge,
01st Court, Alipore,
South 24 parganas.

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