

Order No. 05, dated: 29-09-2023.

The accused persons namely **Arunava Patra & Arjun Das** are produced from J/C.

As stipulated by the previous order today is fixed for production of the accused persons and hearing of the bail petition filed by the accused person namely **Arjun Das**.

On call learned lawyers for the accused person as well as the Ld. Public Prosecutor-in-charge appointed for this case are found to be present and ready for hearing.

Hence the case record is taken up for hearing of the bail petition.

The Ld. Advocates for both the accused person submitted that no bail application in respect of this accused person has been rejected on merit prior to this date.

Ld lawyers for the accused person **Arjun Das** at very exordium emphatically argued that at least some material is required to indict a person and keep him in custody in denial of his personal liberty, but in this case such sanctified position of law has been infringed and the prosecution has wantonly ignored the fact that the detention of an accused person must be preceded by strong prima facie case militating against the accused person. Inviting my attention to the charge-sheet and the materials on record, it was argued by the Ld. Advocates for the accused person that it is the case of the prosecution that this accused person allegedly came to the place of occurrence after the victim was murdered and he has played no role in the offence of murder yet he has been entangled in this case and is custody for near about 210 days. It was also argued that no witnesses examined by the Investigating Officer have deposed about the involvement of this accused person in the alleged offence of murder and if the statements recorded under section 161 of the Criminal Procedure Code 1973 are scrutinized, in that event it will transpire that this accused person had no access to the place of occurrence/flat and found the victim to be already dead. It was also argued that the alleged seizures were never made at the behest of this accused person and there are no materials in the entire case record to justify the indictment of the accused person with the offence imputed. It was adumbrated by the learned lawyers for the accused person that there are several discrepancies in the statement recorded under section 161 of the Criminal Procedure Code 1973 and if all those statements are considered in juxtaposition with the FIR, in that eventuality the improbabilities in the prosecution case as against this accused person will become axiomatic and based on such improbable circumstances it will not be pragmatic to detain a person who is already in custody for the last 210 days. It was astutely expounded by the learned lawyers for the accused person that in our criminal jurisprudence bail has always been considered as the rule and rejection has always been considered to be aberration and relying on this particular point, it was emphatically argued by the learned lawyers for the accused person that if on basis of the limited materials on record the personal liberty of the accused person is infringed, in that eventuality it will percolate injustice upon the accused person. It was also argued that there is no material to suggest that the accused person has any criminal propensity and relying on this particular aspect it was submitted by the Learned

Lawyers for the accused person, that the accused person may be granted bail on any condition. Pining reliance on these points the learned lawyer for the accused person prayer for bail on any condition.

The Ld. Public Prosecutor-in-charge appointed for this case responded with vehemence and strongly opposed the bail prayer. It was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that there are direct materials against the accused person to suggest that this accused person helped the principal accused person to move the dead body from the place of occurrence and there has been recovery at the behest of this accused person and as per the version of the Ld. Public Prosecutor-in-charge appointed for this case, at this stage there is no escape from the conclusion that this accused person was involved in the alleged offence and his indictment under section 201 read with Section 302 of the Indian Penal Code, 1860 cannot be doubted. Inviting my attention to the materials in the CD, it was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that it has been prima facie established that the accused person was in fact involved in the alleged incident and his release at this stage will thwart the course of trial as he has his business in Mumbai and will abscond. It was further pointed out that the offence is grave and serious in nature and releasing the accused person on bail will result in influencing the witnesses and making the trial a mockery.

The CD has been produced today. A bail objection prayer was also submitted. I have passionately traversed the entire gamut of this case and have introspected the materials in the CD with the same vigour in order to aptly answer the question mooted before this court.

At the very outset I must hasten to articulate that though there cannot be any inexorable formula while considering a bail prayer, but at the same time the parameters have well set by plethora of judicial pronouncements. It has become sanctified that it is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. The Hon'ble Supreme Court has repeated sounded a word of caution that any order de hors such reasons suffers from non-application of mind.

Mind being fumigated with the aforementioned legal proposition; when I introspect the materials exposted before me; I find that the gravity of the alleged offence militates against the bail prayer. Definitely grant of bail, is a discretionary order and period of detention is a guiding factor, but such discretion is to be exercised in a judicious manner and on the

application of certain settled parameters and it cannot be on the solitary plank of “period of detention”. Gravity of the alleged crime has to be considered by this Court and as observed by the Hon’ble Supreme Court “More heinous the crime, greater is the chance of rejection of bail, though the exercise also depends on the factual matrix of the matter.” [See **CRIMINAL APPEAL NO. 230 OF 2022 (Arising out of S.L.P.(Crl.) No. 245 of 2022) JAMEEL AHMAD Vs. MOHAMMED UMAIR MOHAMMAD HAROON & ANR.**]

I must also hasten to articulate that after having perused the materials in the CD, the claim of the accused person that he is innocent cannot be countenanced at this stage. It is also axiomatic that vital witnesses are yet to be examined in this case. Where circumstances presented through the seizure, CCTV footage and the TIP report, give room to strongly suspect the culpability of the accused person in the offences imputed and circumstances creating the allusion that there are chances of polluting the course of the trial, if released on bail, I find that the accused person is not entitled to be released on bail at this stage.

Much was argued on the point of alleged discrepancies in the investigation and lack of credible materials against the accused person, but at this stage it will not be pragmatic to go into such particulars in details as it has been repeatedly held by the Hon’ble Supreme Court that at the time of considering a bail prayer indulging into a mini trial is not licit. In **Mahipal v. Rajesh Kumar alias Polia and Anr; 2020 (2) SCC 118** it has been held by the Hon’ble Supreme Court that the Court, amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record, and should not be confused with examination in detail of the evidence on record to come to a conclusive finding. Axiomatically thus; attempt on the part of the Ld. Advocates for the accused person cannot be countenanced at this stage and this Court must not venture into appreciating the evidences as done in course of trial.

Hence based on the above delineations I find that it is not a fit case where leverage of bail should be extended to the accused person and as an obvious outcome the prayer for bail as manifested by the accused person namely **Arjun Das** stands rejected at this stage.

P.W-02 is present today but on verbal prayer of the Ld. Advocate for the accused person the recording of evidence is not taken up today. The case is adjourned.

The accused person be remanded to J/C and be produced on the date fixed.

To 05-10-2023 for production of the accused persons and further order.

Typed to the dictation directly;
corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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01st Court, Alipore, South 24 parganas.