

28.08.2020.
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(Allowed)

C.R.M. 5973 of 2020
With
CRAN 4414 of 2020
(Via Video Conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Beliaghata P. S. Case No.20 of 2020 dated 26.01.2020 under Sections 302/201 of the Indian Penal Code.

In the matter of : Sandhya Maloo.

.... Petitioner.

Mr. Madhumita Basak.

...for the Petitioner.

Mr. Prasun Datta,
Mr. Santanu Deb Roy.

...for the State.

Heard the learned Advocates appearing for the parties.

Petitioner undertakes to affirm and stamp the petition/application as per Rules within a month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

Accordingly, the application, being CRAN 4414 of 2020, is disposed of.

Petitioner is in custody for more than 400 days. It is submitted on behalf of the petitioner that there is no eye witness to the incident. She has been falsely implicated in the instant case.

Learned Advocate appearing for the State opposes the prayer for bail and submits that the petitioner gave a false explanation

regarding the disappearance of her minor girl. Subsequently, on her leading statement the dead body was recovered from a box on the eastern side wall of a hall in the house of the de-facto complainant. The weapon of offence is also recovered.

We have considered the materials on record. Motive of the crime as proposed by the prosecution is frustration of the petitioner who was unable to breastfeed her child. We do not express any opinion with regard to such motive which requires to be assessed in the light of other statements on record. However, the most clinching evidence with regard to the alleged recovery of the dead body and weapon of offence pursuant to the so-called leading statement of the petitioner appears to have been recorded in a most evasive manner as follows:

“I am to state further that

X X X X X X X X X X

X X X X X X X X X X

X X X X X X X X X X

X X X X X X X X X X

After committing the murder I kept the body concealed at the premises of our apartment and if I would be taken there I can show the place. Police have examined me and have recorded my statement.”

Another statement was supposedly recorded on the selfsame:-

“In addition to my earlier statement I am to state further that

**X X X X X X X X X X
X X X X X X X X X X
X X X X X X X X X X
X X X X X X X X X X**

After committing the murder I kept concealed the cellophone tape and knife in a secret place in our flat and I can show police where I kept concealed the remaining cellophone tape and the knife, used by me in committing the murder, if I would be taken there.

Today police have examined me and have recorded my statement.”

True and complete disclosure of the crime is the heart and soul of a confessional statement. No such disclosure is evident in the aforesaid statements although the purported statements are prefaced by the words “after committing the murder.” Recording of confessional statement in the aforesaid manner is patently contrary to law and the prevalent regulation viz., Regulation 99 of Calcutta Police Regulations regulating such exercise.

Investigating Officer is present before us and is unable to give any convincing explanation for such lapse.

Under such circumstances, we are constrained to hold that the purported confessional statements leading to recovery are shrouded in mystery and prima facie do not inspire confidence. It is also apposite to bear in mind that the recovery of the dead body and other incriminating articles was from a place which was in the control of other members of the family.

We are not unmindful of the gruesomeness of the crime involving murder of a minor child. However, we express serious displeasure at the indifferent and callous manner in which investigation was conducted particularly the manner in which so-called leading statements of the accused was recorded. Manner and circumstances attending such recording cast an ominous doubt with regard to authenticity. We choose not to express any further opinion in the matter as it may affect the fate of the proceeding at a future date.

However, in the light of such glaring lacuna in the most important circumstance relied by the prosecution against the petitioner, we are constrained to enlarge her on bail.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah, 24-Paraganas subject to condition that the petitioners shall appear before the

trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel her bail in accordance with law without further reference to this Court.

Keeping in mind the laconic and indifferent manner in which investigation of such a serious crime is being conducted, we are inclined to pass following directions to ensure a fair and impartial investigation:-

- (a) Commissioner of Police, Kolkata shall transfer the investigation in the instant case to Detective Department, Lalbazar and the same shall be conducted by a superior police officer under the supervision of Deputy Commissioner, Detective Department, Lalbazar.
- (b) Commissioner of Police, Kolkata shall conduct an enquiry through a senior police officer not less than the rank of Deputy Commissioner of Police into the indifferent manner in which the investigation in the instant case has been conducted particularly the recording of the so-called confessions in utter disregard to all canons of fair procedure particularly Regulation 99 of Calcutta Police

Regulations. Needless to mention, the Commissioner shall promptly initiate appropriate disciplinary proceeding against the investigating officer in the event he is unable to render proper explanation for his conduct in the course of the said enquiry.

Commissioner of Police, Kolkata shall submit report with regard to steps taken by him in the matter on the next date.

Let this matter appear three months hence.

Department is directed to communicate a copy this order to the Commissioner of Police, Kolkata for necessary compliance.

The application, being C.R.M. 5973 of 2020, is disposed of.

(Suvra Ghosh,J.)

(Joymalya Bagchi, J.)