

03.08.2021
Court No. 30
Item Nos. 13 & 14
PA

C.R.M. No. 10442 of 2020

In Re: **Harun Rasid Khan**

... Petitioner

And

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Baruipur Police Station Case No. 1355 dated 23.06.2019 under Sections 302/34 of the Indian Penal Code and under Sections 25/27 of the Arms Act.

With

C.R.M. No. 4630 of 2020

+

CRAN 1 of 2020 (Old No. CRAN 2791 of 2020)

Minajuddin Mondal

Vs.

The State of West Bengal & Anr.

In Re:- An application for cancellation of bail under Section 439(2) read with Section 482 of the Code of Criminal Procedure;

Mr. Jaydeep Biswas.

... For the Petitioner in C.R.M. 10442 of 2020

&

Opposite Party No. 2 in C.R.M. 4630 of 2020

Mr. Uday Sankar Chattopadhyay,

Mr. Santanu Maji,

Ms. Snigdha Saha,

Mr. Subhayu Das.

... For the Petitioner in C.R.M. 4630 of 2020

&

de-facto complainant in C.R.M. 10442 of 2020

Mr. Sudip Ghosh,

Mr. Bitasok Banerjee,

Mr. Apurba Kumar Datta.

...For the State

(in both matters)

On the prayer of both parties, these two applications being CRM No. 10442 of 2020 and CRM No. 4630 of 2020, are taken up together for hearing since decision of CRM No. 4630 of 2020 may adversely affect the decision of CRM No. 10442 of 2020.

CRM No. 10442 of 2020 is relatable to bail application under Section 439 of the Code of Criminal Procedure for petitioner/Harun Rasid Khan, who is in custody since 6.7.2019, while CRM 4630 of 2020 has emerged out for cancellation of bail for one Shahed Parvez @ Md. Shahid @ Kata Sahid.

Sessions Case No. 272 of 2019, arises out of Baruipur Police Station Case No. 1355 of 2019 dated 23.06.2019 under Sections 302/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act, wherein Harun Rasid Khan (petitioner of CRM 10442/2020), and Shahed Parvez @ Md. Shahid @ Kata Sahid (opposite party no. 2 of CRM 4630/2020) with others have been charge-sheeted in a case of murder for causing death of Nijamuddin Mondal on 23.06.2019, while he was returning home after attending a ceremonial occasion near Mallikpur rail gate/Van Stand.

De-facto complainant/Minajuddin Mondal being the brother of deceased, set the law in motion lodging F.I.R. before the concerned police station. Police took up investigation and ultimately submitted charge-sheet in 2019, making out a case

under Sections 302/34 I.P.C. read with Sections 25/27 of Arms Act.

Shahed Parvez @ Md. Shahid @ Kata Sahid was granted bail by Co-ordinate Bench of this Court on 09.06.2020, in connection with CRM 3844 of 2020, with condition that Shahed Parvez @ Md. Shahid @ Kata Sahid (Opposite Party No. 2 of CRM No. 4630/2020) shall appear before the learned Trial Court on every date of hearing until further orders, and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It was also made clear in such order that in the event, the petitioner fails to appear before the learned Trial Court without any justifiable cause, the Trial Court would be at liberty to cancel the bail in accordance with law without any further reference to this Court.

Being aggrieved by the order dated 09.06.2020 passed by in CRM No. 3844 of 2020, granting bail to Shahed Parvez @ Md. Shahid @ Kata Sahid, *de-facto* complainant namely, Minajuddin Mondal, has filed the application for cancellation of bail vide CRM 4630 of 2020.

Principally, the grounds taken in support of the prayer for cancellation are: (1) that Shahed Parvez @ Md. Shahid @ Kata Sahid has been sending men and agents to pressurise and intimidate the *de-facto* complainant and the witnesses for withdrawing the instant case, (2) that on 13.06.2020, *de-facto* complainant lodged a specific complaint before Officer-in-

Charge of Baruipur P.S. alleging, inter alia, that *de-facto* complainant had received threat and continuous pressure for withdrawing the murder case, and (3) that Shahed Parvez @ Md. Shahid @ Kata Sahid, while on bail being an influential and notorious person, has been roaming freely in the locality, which would amount to tampering of evidence in the instant case resulting in acquittal of the culprits.

As against the prayer for bail of Shahed Parvez @ Md. Shahid @ Kata Sahid, another co-accused Harun Rasid Khan has sought for bail claiming parity so that the privilege of bail, as granted to Shahed Parvez @ Md. Shahid @ Kata Sahid, may be similarly extended to him.

Since the decision of prayer for cancellation of bail is directly relatable to the prayer for bail, as sought for by Harun Rasid Khan, we are of considered view that application for cancellation of bail should be addressed first, and thereafter the prayer for bail may be decided.

Learned advocate for the petitioner supporting the prayer for cancellation of bail is very much vocal that *de-facto* complainant has been receiving continuous threat and pressure from men and agents of Shahed Parvez @ Md. Shahid @ Kata Sahid for withdrawing the murder case against him with others and the witnesses are put to face intimidation therefor, and under a compelling circumstances General Diary and a complaint had to be lodged at concerned police station.

Learned advocate for the State Mr. Sur produces a report of Baruipur P.S. dated 22.07.2021 with C.D to facilitate the decision pertaining to cancellation of bail.

The report be kept on record.

It reveals from the report that one Sabir Beg lodged a General Diary on 05.03.2020 before police station, alleging that some unknown persons had been following him and after an enquiry conducted by police, the identity of the followers could not be established by the police. The complaint submitted by the *de-facto* complainant/Minajuddin Mondal to Baruipur P.S. on 13.06.2020, depicted a case, wherein Minajuddin Mondal alleged, inter alia, that while he was returning home from Benechandni and reached Hariharpur Panchayat, suddenly 4-5 unknown miscreants appeared before him with their faces being wrapped with cloths and threatened him taking arms and deadly weapons with them.

On the basis of such complaint, police took up investigation registering a specific case being Baruipur P.S. Case No. 1198 of 2020 dated 13.06.2020 under Sections 341//506/195A/34 I.P.C., and read with Sections 25/27 of Arms Act, and ultimately submitted FRT without fixing the identity of unknown miscreants, being confronted with the Minajuddin Mondal.

The police report is very specific that, while holding inquiry, it could be learnt that Shahed Parvez @ Md. Shahid @ Kata Sahid was arrested in connection with Anandapur P.S.

Case No. 104 dated 01.07.2021 under Sections 3/4 ES Act, and he was on police remand till 17.07.2021, in connection with Ekbalpur P.S. Case No. 129/2021.

It is thus clear from the police report that allegation of having received threat by the men and agents of Shahed Parvez @ Md. Shahid @ Kata Sahid could not be established even after registering a specific case, after an investigation.

Learned advocate for the Opposite Party No. 2 submits that bail once granted should not be cancelled in a mechanical manner without considering whether a supervening circumstances have rendered it no longer conducive to a fair trial to allow accused to retain his freedom by enjoying concession of bail during trial.

It is thus sought to be established by the learned advocate for the opposite party no. 2 that very cogent and overwhelming circumstances are necessary for an order directing cancellation of a bail already granted, and the circumstances brought on record have not reflected any situation, where the bail was misused by accused. No new adverse facts have surfaced requiring such cancellation of bail.

Reference was accordingly placed on a decision reported in **(2018) 16 SCC 511** delivered in the case of **X Vs. State of Telengana & Anr.**, wherein it was decided that bail once granted should not be cancelled unless a cogent case, based on supervening event has been made out.

Surprisingly, no case is found to have been made out showing violation of the conditions of bail order dated, 09.06.2020, granting bail to Shahed Parvez @ Md. Shahid @ Kata Sahid. There is no adverse report available that there is possibility of interdicting fair trial by the accused, if released on bail.

In view of the stipulation in the bail order that in the event the petitioner fails to appear before the Trial Court, being one of the conditions of bail order, without any justifiable cause, the Trial Court shall be at liberty to cancel the bail in accordance with law without any further reference to this Court, we are of considered view that mere registration of a case against unknown persons alleging to have received threat and confronted with intimidation for withdrawing the murder case preceded by entry in G.D. book of police station against unknown persons would not themselves sufficient enough to establish that Shahed Parvez @ Md. Shahid @ Kata Sahid intimidated witnesses or tampered with evidence in any manner whatsoever and threatened *de-facto* complainant for withdrawing the case.

The police report so submitted simply outweighs the threat perception of the *de-facto* complainant, and the witnesses cited in the charge-sheet involving murder of the deceased brother of the *de-facto* complainant.

Simpliciter registration of a case by *de-facto* complainant/Minajuddin under Sections 341/506/195A/34

I.P.C. read with Sections 25/27 of Arms Act, together with a diary being lodged previous to the registration of a specific case against unknown person, would not tantamount to supervening circumstances, supportive of cancellation of bail.

Supervening circumstances, as contemplated for cancellation of bail, in the light of such decision referred above must be of such a nature as to lead to the conclusion that the accused does not deserve to be at liberty either by reason of violation of the condition of bail, or due to supervening conduct, which bears upon the misuse of liberty by accused.

We are thus constrained to say that no such case is made out by the *de-facto* complainant seeking cancellation of the bail. There is no material also before the Court showing the possibility of the accused absconding so as to frustrate the trial.

In the absence of any cogent materials being placed, based on supervening event, we perceive the case to be not coming within the meaning of supervening event in the light of the ratio decided in the case of ***X Vs. State of Telengana & Anr. (Supra)***, which has been rightly referred by learned advocate for the opposite party no. 2.

When FRT has been submitted by police following receipt of a complaint of Minajuddin Mondal dated 13.06.2020, and no subsequent steps having taken for duly redressing the grievance taking recourse to the provisions of law, there is nothing before us for our objective satisfaction that *de-facto*

complainant and witnesses had received threat for withdrawing the case.

Capital is sought to be derived by learned advocate for the opposite party from another decision reported in **(2014) 10 SCC 754** rendered in the case of ***Abdul Basit alias Raju & Ors. Vs. Mohd. Abdul Kadir Chaudhary & Anr.***, in order to distinguish that the order granting bail to Shahed Parvez @ Md. Shahid @ Kata Sahid was on merits, but not an order of default of the prosecuting agency under Section 167 (2) Cr.P.C.

It is not the case of the *de-facto* complainant that Shahed Parvez @ Md. Shahid @ Kata Sahid obtained bail making gross misrepresentation of facts, and mislead the court indulging in fraud. In the case of default bail under Section 167(2) Cr.P.C., the prosecution may seek to have the bail cancelled after curing the defects leading to the submission of the charge-sheet, that there are reasonable grounds to believe that accused has committed a non-bailable offence, and that it is necessary to arrest him and commit him to custody, but that is not the position, as covered in the case on hand.

The decision thus referred above has some direct relevance to the text under reference.

Involvement of Shahed Parvez @ Md. Shahid @ Kata Sahid in some other cases during the post bail period, though may attract the post conduct of the accused, while on bail, but it would neither make out a case of supervening event,

nor a case of misconduct justifying cancellation of privilege of bail already extended to him.

The prayer for cancellation of bail thus stands refused.

We, however, take notice of the anguish expressed by the learned advocate for the *de-facto* complainant, as regards the delay in progress of the trial together with the delay caused in the commencement of the trial by not framing a charge against the accused persons, and request the Trial Court to mark the commencement of the trial framing charge for the purpose expeditiously, if not already framed, after adhering to the provisions of law.

As regards the prayer for bail, learned advocate for petitioner/Harun Rasid Khan, submits that his case stands on better footing than that of Shahed Parvez @ Md. Shahid @ Kata Sahid, who has already been favoured with bail on 09.06.2010, in connection with CRM No. 3844 of 2020.

Claiming parity of the order, it is further submitted that petitioner is in custody since 06.07.2019, and with the submission of charge-sheet further detention of the petitioner would be unnecessary.

Learned advocate for the State raises objection against the prayer for bail submitting that Harun Rasid Khan is not similarly circumstanced with Shahed Parvez @ Md. Shahid @ Kata Sahid, who was granted bail in CRM No. 3844 of 2020. To enforce the objection against the prayer for bail, our attention is drawn to some of the statements of witnesses

recorded under Section 164 Cr.P.C. and 161 Cr.P.C., and the *post mortem* report.

We have perused the statement of witnesses recorded under Section 164 Cr.P.C. and 161 Cr.P.C. together with *post mortem* report. Deceased victim succumbed to injuries receiving gun shot wound. Nothing has been recovered from petitioner.

Having considered the submissions of respective learned counsel of both sides in context with the materials placed on record, and also taking into account the extent of complicity of the petitioner together with the period of detention already suffered by the petitioner, we are inclined to grant bail to petitioner without making any discrimination with Shahed Parvez @ Md. Shahid @ Kata Sahid.

Accordingly, the petitioner, namely Harun Rasid Khan 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 learned A.C.J.M Baruipur subject to the condition that the petitioner shall appear before the learned 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 of the petitioner fails to appear before the Trial Court without any justifiable cause, the Trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

Both the Criminal Miscellaneous cases bearing no. CRM No. 10442 of 2020 and CRM No. 4630 of 2020 accordingly stand disposed of.

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

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)