

13.07.2022
Sl. No.58
akd

C. R. M. (DB) 14 of 2022

In Re : An application for cancellation of bail under Section 439(2) read with Section 482 of the Code of Criminal Procedure filed on 03.01.2022 :

A N D

***In Re : The Central Bureau of Investigation, Special Crime Branch, Kolkata
..... Petitioner***

Mr. Kallol Mondal
Mr. Amajit De
Mr. Arka Bhattacharyya

... .. for the petitioner-CBI

Mr. Arindam Jana
Mr. Soumajit Chatterjee

... .. for the opposite party

Central Bureau of Investigation has assailed order dated 9th November, 2021 in CRM 616 of 2021 enlarging opposite party-accused on bail in Bhatpara Police Station Case No. 282 of 2021 dated 06.06.2021 under Sections 302/307/323/326/506/120B/34 of the Indian Penal Code.

On 06.06.2021 opposite party-accused along with his associates viz. Animesh Paul and Bishal Chowdhury had come to the residence of the deceased viz. Jay Prakash Yadav. They abused him in filthy language. Hearing the row, the victim viz. J. P. Yadav, his father viz. Mishri Lal Yadav and niece viz. Sapna Yadav came out of the house. At that time opposite party-accused asked the victim to vacate the land failing which he will be murdered. He had an article resembling steel glass in his hand. He further stated the victim had misbehaved with Lalan Singh and Chandan Singh. When the victim went to talk with the said persons, opposite party-accused further threatened that he had been sent by them to kill him. When Sapna tried to record his statements in her mobile phone, opposite party-accused stopped referring to Lalan Singh and Chandan Singh. Thereafter, opposite party-accused threw a

bomb at the head of the victim. Victim suffered injuries and fell at the spot. His mother viz. Rajmati Devi also sustained injuries on her forehead. Thereafter, opposite party-accused, Animesh Paul and Bishal Chowdhury ran away. Ultimately, victim succumbed to his injuries.

Rajmati Devi lodged complaint with Bhatpara police station against the opposite party-accused and other accused persons viz. Chandan Singh, Lalan Singh, Animesh Paul and Bishal Chowdhury. In the complaint Rajmati stated on earlier occasions Chandan and Lalan had threatened his son to vacate the house otherwise he would be killed.

On 28.06.2021 local police authorities investigating the case arrested the opposite party-accused and he was remanded to custody.

Pursuant to the direction of this court in WPA Nos. 142, 143, 144, 145, 146, 147, 148, 149, 167 of 2021, investigation was transferred to the Central Bureau of Investigation and RC Case No. RC0562021S0009 dated 25.08.2021 came to be registered. Charge-sheet in the case was filed on 03.09.2021 with a prayer for further investigation as other accused persons including Chandan Singh and Lalan Singh had not been arrested and sanction from appropriate authority under Explosive Substances Act was awaited.

On 09.11.2021 the trial Judge by the impugned order, enlarged opposite party-accused on bail, inter alia, on the ground that investigation is complete and there is no allegation for use of explosive substance.

Mr. Kallol Mondal along with Mr. Amajit De, learned advocates for the Central Bureau of Investigation submits the court below did not consider gravity of the offence and the principal role played by the opposite party-accused. Said accused had thrown the bomb at the deceased. Injuries were suffered by others too. Bomb remnants were collected from the place of occurrence and FSL report shows presence

of explosive chemical in the seized remnants. Learned Judge failed to consider the aforesaid incriminating materials and came to an incorrect finding there were no allegation of use of explosive substance in the case. He further submits upon obtaining sanction from appropriate authority, CBI intends to file supplementary charge-sheet under the provisions of Explosive Substances Act. After his release on bail, opposite party-accused has blatantly violated the conditions of bail. He threatened the de-facto complainant and her family members. He was found with a firearm within Bhatpara police station and a separate criminal case being Bhatpara Police Station Case No.226 dated 19.03.2022 was registered against him. Another criminal case being Bhatpara Police Station Case No.141 dated 21.02.2022 has also been registered against opposite party-accused. He is a dangerous person and his continuation on bail would cause a serious threat to life of the vital witnesses and fair prosecution in the case.

Mr. Arindam Jana, learned advocate for the opposite party-accused rebutting the aforesaid submissions argues opposite party-accused was in custody for more than five months. After considering all relevant factors, the court below enlarged him on bail. He is ready and willing to face the trial. General Diary with regard to allegation of threat upon the de-facto complainant and her family members is a belated one. Alleged recovery of firearm which is the subject matter of Bhatpara Police Station Case No.226 dated 19.03.2022 is false. There was no independent witnesses to the said recovery.

We have considered the rival submissions of the parties. Statement of Rajmati Devi, de-facto complainant and other family members of the deceased viz. his father viz. Mishri Lal Yadav and niece viz. Sapna Yadav and his wife viz. Sangeeta Yadav show opposite party-accused had thrown bomb at the deceased. Their ocular version is

supported by other contemporaneous materials on record. Seizure effected from the spot shows recovery of bomb remnants. FSL examination of the remnants establish presence of explosive substance therein. These vital materials were wholly ignored by the court below which came to a perverse finding that there was no allegation of use of explosive substance. The court below failed to appreciate non-addition of offences under Explosive Substances Act in the charge-sheet was on the ground sanction from appropriate authority was awaited and cannot affect the merits of the case against the accuseds.

We are informed Central Bureau of Investigation intends to file supplementary charge-sheet under the provisions of Explosive Substances Act as soon as the sanction is obtained.

In the aforesaid factual matrix, failure to charge the opposite party-accused for offences under the Explosive Substances Act does not erode the prima facie case against opposite party-accused which is established on the basis of statements of eyewitnesses which are corroborated by medical evidence and other materials on record. Gravity of the offence and reliable evidence collected in support of accusation are relevant considerations for grant of bail. These aspects require to be balanced with the period of detention suffered by an undertrial and factors peculiar to the case.

The court below has completely ignored the gravity of the offence and the principal role played by the opposite party-accused therein. It has come to a wholly erroneous finding with regard to absence of allegation regarding use of explosives in the charge-sheet.

That apart, opposite party-accused appears to be a dangerous person who has little respect for law. He was enlarged on bail subject to condition that he shall not enter Bhatpara Police Station. He

flagrantly violated the condition and was apprehended at Tinabazar field within Bhatpara police station with a firearm.

It is contended recovery of firearm is not supported by independent witnesses. We choose not to make any comment on such score. However, there are ample materials to show apprehension of opposite party-accused at Tinabazar field on 19.03.2022. Another criminal case being Bhatpara Police Station Case No.141 dated 21.02.2022 under Sections 341/506/34 IPC has been registered against him prima facie establishing violation of the aforesaid condition i.e. not to enter the jurisdiction of Bhatpara police station. Conduct of the opposite party-accused is reprehensible and his flagrant disregard of law gives rise to serious apprehension in our minds, if he is allowed to remain at large, it would have serious impact on the psyche of the de-facto complainant and witnesses and their lives and properties may be at stake.

For the aforesaid reasons, we are inclined to hold order granting bail to opposite party-accused suffers from non-consideration of relevant factors namely, gravity of the offence and legally admissible materials collected in course of investigation prima facie establishing his principal role in the murder. After release on bail, he has violated the condition of bail i.e. not to enter the jurisdiction of Bhatpara police station. As a result, other criminal cases have been registered against him.

Under such circumstances, we are of the opinion order granting bail to the opposite party-accused is liable to be cancelled.

Accordingly, order dated 09.11.2021 passed in CRM 616 of 2021 is set aside.

Opposite party-accused herein is directed to surrender before the court below within 48 hours failing which the Investigating Agency as

well as the court below shall be at liberty to resort to appropriate processes for his apprehension in accordance with law.

CRM (DB) 14 of 2022 is thus disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)