

04.04.2022
Sl. 97
Court No.29
sourav

C.R.M. (DB) 464 of 2022

In Re: - An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure.
And

In the matter of: **The State of West Bengal**

....petitioner.

Mr. Rudradipta Nanay,

...for the petitioner

Mr. Aniruddha Bhattacharyya,

...for the opposite party no. 2

State is the petitioner.

State seeks cancellation of bail granted by the jurisdictional court to the private opposite party no. 2.

Learned advocate appearing for the State submits that the private opposite party no. 1 is still in custody and, therefore, the petition be treated as “not pressed” so far as the private opposite party no. 1 is concerned.

Learned advocate appearing for the State submits that the private opposite parties were involved in an incident of snatching of valuables from morning walkers. There are three incidents in the same locality one after the other. The opposite parties also used firearms as well as knives in the incident. One of the victims of one of the incidents is still in the hospital.

Learned advocate appearing for the State submits that the jurisdictional court did not look into the materials in the case diary implicating the private opposite party no. 2 in the incident. He submits that the jurisdictional Court proceeded on the basis of filing of charge-sheet and the possibility of the evidence not being recorded soon in view of the ongoing pandemic. He submits that on January 24, 2022 when the interim bail granted on

January 6, 2022 was being confirmed, the learned judge ought to have taken into consideration the materials in the case diary.

Learned advocate appearing for the private opposite party no. 2 submits that there is hardly any allegation of post bail misconduct as against his client, his client will face the trial.

Learned advocate appearing for the State submits that the police received a complaint against the private opposite party no. 2 with regard to the threatening of one of the witnesses.

Learned advocate appearing for the private opposite party no. 2 submits that the person making the complaint against the private opposite party no. 2 is an independent witness so far as the seizure in respect of co-accused is concerned.

Since the private opposite party no. 2 is not connected with such co-accused, the question of the private opposite party no. 2 threatening such person does not arise.

The police filed charge-sheet, *inter alia*, under Sections 392/394/397 of the Indian Penal Code read with Sections 25(1B)(a)/27 of the Arms Act.

The present police case relates to an incident of July 14, 2021. The defacto complainant narrates that while at morning walk, he found an unknown person beating the another person with pistol butt and taking away is mobile phone and cash money. The defacto complainant approached to rescue the victim whereupon the another unknown person sitting on a white colour scooty took out a knife and threatened the defacto complainant and took away his mobile phone and cash.

The defacto complainant subsequently identified the two persons involving in the incident in the Test Identification

Parade. The private opposite party no. 2 is one of the persons identified in the Test Identification Parade.

There are two other criminal complaints of the same date in the same locality pending as against the private opposite parties.

The allegations as against the private opposite parties are serious, to say the least.

There is an allegation of post bail misconduct as against the private opposite party no. 2 also.

The jurisdictional court proceeded to grant initially interim bail to the private opposite party no. 2 on January 6, 2022 on the ground of the police filing charge-sheet and that it was not possible to record evidence due to ongoing pandemic. The interim bail granted was confirmed on January 24, 2022 on the same premises.

Filing of the charge-sheet *ipso facto* does not entitle the accused to bail. The gravity of the offence and the involvement of the accused therein are relevant factors required to be taken into consideration.

At the stage of cancellation of the bail, the Court is required to take into consideration whether or not the jurisdictional court fails to take into account to the relevant materials in the case diary.

The two orders dated January 6, 2022 and January 24, 2022 do not discuss the nature of the offence and the involvement of the petitioner therein and materials in the case diary as against the private opposite party no. 2. As noted above, bail was granted purely on the basis of the police filing charge-

sheet and ongoing pandemic. With due respect to the jurisdictional court, we are of the view that those two conditions taken together also does not entitle the private opposite party no. 2 to an order for bail considering the gravity of the offence and the involvement of the private opposite party no. 2 as appearing from the materials in the case diary.

Consequently, the bail granted to the private opposite party no. 2 by the order dated January 6, 2022 is cancelled. The order rejecting the prayer for cancellation passed on January 24, 2022 is set aside.

The private opposite party no. 2 will surrender before the jurisdictional court within seven days from date.

CRM (DB) 464 of 2022 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

