

01.03.2022
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15 & 16

**CRR 391 of 2020
with
CRM 648 of 2020
(via video conferencing)**

In Re : Court of its own motion

..... petitioner
(in CRR 391 of 2020)

In Re : Suraj Prasad

..... petitioner
(in CRR 648 of 2020)

Mr. Arindam Jana
Mr. Sumonto
Mr. Saket Sharma

..... for Biki Prosad

Mr. Malay Bhattacharyya
Mr. S. Hela

..... for Surajit Raha

Mr. Swapan Banerjee, Ld. A.P.P.
Ms. Purnima Ghosh

..... for the State

While hearing the subsequent bail application of co-accused Suraj Prasad in CRM 648 of 2020, this Court noticed two co-accused persons namely Biki Prasad and Surojit Raha @ Mongal had been enlarged on bail by the Additional Sessions Judge vide order dated 26.08.2019 without considering the fact that prayer for bail of Suraj Prasad had

been turned down by this court a month ago on 25.07.2019 in CRM No. 6573 of 2019 vide order dated 25.07.2019. Under such circumstances Rule was issued upon Surojit Raha @ Mongal and Biki Prasad to show cause why the order dated 26.08.2019 granting bail to them be not set aside.

Rule was served upon the respondents/accused persons namely Surojit Raha @ Mongal and Biki Prasad. They have filed counters to the said Rule.

Learned Counsels appearing for the Surojit Raha @ Mongal and Biki Prasad argue that they were released on bail after a considerable period of detention. It is also contended that they were not put up for test identification parade examination. Hence, their bail orders ought not to be disturbed.

On the other hand, Mr. Banerjee, Additional Public Prosecutor with Ms. Ghosh, submit the bail orders were passed without considering the rejection of similar relief by this Court to co-accused namely Suraj Prasad. Respondents/accused persons Surojit Raha @ Mongal and Biki Prasad stand on the same footing with Suraj Prasad. Stolen articles had been recovered from them soon after the robbery and the recovered articles have been identified in the course of test identification parade by the informant. They have criminal antecedents. Hence bail granted to the respondents/accused persons be cancelled.

In reply, it is contended on behalf of the respondents/accused persons that they have been regularly attending the trial court and did not misuse their liberty in any manner whatsoever.

We have given anxious considerations to the submissions made before us. Materials on record show on 02.10.2018 one Sudarshan Addhya, father of the de facto complainant, was robbed by miscreants. Sudarshan was brutally assaulted in the course of the incident and gold ornaments carried by him in a bag were stolen. Soon after the incident, Surojit Raha @ Mongal was arrested on 16.10.2018 and one pair of gold like Pola Bandhano, two pairs of gold like ear rings, two pieces of gold like finger rings and two pieces of gold like baby finger rings were recovered from him. On his leading statement, a blue and black colour pulsar motor cycle was also recovered. Subsequently, Suraj Prasad was arrested on 25.10.2018 and from Suraj in addition to improvised pipe gun, two gold like finger rings, two gold like baby fingers and one gold like ladies chain were recovered. Respondent Biki Prasad was in custody in another case. He was interrogated on 19.12.2018 and one gold like finger ring, one pair of gold like ear ring were seized pursuant to his statement. Seized ornaments have been identified by the informant in the course of test identification parade. These materials show soon after the incident stolen articles were recovered from the

respondents/accused persons Surojit Raha @ Mongal and Biki Prasad as well as co-accused Suraj Prasad clearly establishing their role in the robbery. Prayer for bail of co-accused Suraj Prasad was repeatedly turned down by this Court on 10.04.2019 as well as 25.07.2019 in CRM No. 2987 of 2019 and CRM No. 6573 of 2019 respectively.

Without considering the aforesaid facts, learned Additional Sessions Judge by the impugned order dated 26.08.2019 granted bail to the respondents/accused persons Surojit Raha @ Mongal and Biki Prasad. While granting bail, learned Additional Sessions Judge failed to consider the gravity of the offence and involvement of the respondents/accused persons therein. It was also incumbent on the part of the learned Additional Sessions Judge to consider rejection of bail prayer of the similarly placed co-accused Suraj Prasad by this Court. Failure to consider these vital facts amount to clear non-application of mind on the part of the learned Additional Sessions Judge. Within a month of rejection of bail to a co-accused by this Court, the court below enlarged the respondents/accused persons on bail who stand on the same footing with the co-accused, whose bail prayer was turned down by this Court. His conduct is a clear affront to principles of parity, judicial decorum and comity of courts.

In view of the aforesaid facts, we are constrained to observe that learned Additional Sessions Judge had not taken

into consideration relevant circumstances while granting bail to the respondents/accused persons. That apart, respondents/accused persons have criminal antecedents which also was not considered. Hence, we are of the opinion that the order granting bail was clearly perverse and contrary to the interest of justice. Thus, we are inclined to set aside the impugned order granting bail to the respondents/accused persons namely Surojit Raha @ Mongal and Biki Prasad. They are directed to appear before the trial court within seven days from date and pray for regular bail in accordance with law.

In the event they do so, trial court shall consider their prayer for bail independently and in accordance with law in the light of all relevant facts and passed appropriate order thereon.

Rule is, accordingly, made absolute.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)