

05.08.2022
Sl. Nos.32, 33 & 34
akd/PA

C. R. M. (DB) 628 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 19.02.2022 :

A N D

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

W I T H

C. R. M. (DB) 629 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 18.02.2022 :

A N D

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

W I T H

C. R. M. (DB) 630 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 18.02.2022 :

A N D

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

Mr. S. V. Raju .. Id. Addl. Solicitor General
Mr. Samrat Goswami
Mr. Anshuman Singh
Mr. Ankit Bhatia
Mr. Harsh Paul Singh

... .. for the petitioner-CBI
[in all applications]

Mr. Angshuman Chakraborty
Mr. Debabrata Sarkar
Mr. Shashanka Shekhar Saha
Mr. Mrinal Kanti Maity

... .. for the opposite party
[in all applications]

The aforesaid applications for cancellation of bail raise similar questions of law and fact. Hence, they are heard analogously and disposed of by a common order.

In Re : C.R.M. (DB) 630 of 2022

Petitioner-Central Bureau of Investigation (CBI) has assailed order granting interim bail dated 22.10.2021 as well as order dated 19.01.2022 whereby the interim bail was confirmed to opposite party-Rajesh Sardar.

Mr. S. V. Raju, learned Additional Solicitor General along with Mr. Samrat Goswami for the Central Bureau of Investigation submits the impugned orders suffer from gross perversity and are liable to be set aside. Learned Judge failed to consider the gravity of the offence and materials collected in course of investigation which clearly disclose opposite party-accused was a member of the unlawful assembly and had come to the spot sharing the common object to murder. Opposite party along with other accuseds had indiscriminately assaulted a number of persons and had fired at one Sourav Bar. As a result, Sourav died. It is further contended opposite party-Rajesh Sardar was in custody for barely 2½ months and was granted interim bail pending investigation by CBI.

Mr. Angshuman Chakraborty, learned advocate appearing for the opposite party-Rajesh Sardar submits the opposite party-accused had cooperated during investigation and after considering the statements recorded under Sections 161/164 of the Code of Criminal Procedure, the Sessions Judge released him on bail. This court may not substitute its discretion in place of that of the Sessions Court particularly when it enures to liberty of an individual.

We have considered the rival submissions in the light of the materials on record. Opposite party-Rajesh Sardar has been named as an accused in the FIR. It is alleged he along with others had come to the spot being armed with various weapons including firearms and had assaulted the de-facto complainant viz. Rup Kumar Bar and

others. Sourav Bar, son of Rup Kumar Bar intervened. Thereupon, he was fired and died at the spot. Statements of witnesses were recorded under Sections 161/164 of the Code of Criminal Procedure during investigation conducted by state police. Subsequently, upon order passed by this court in WPA (P)142, 143, 144, 145, 146, 147, 148, 149 & 167 of 2021, investigation was transferred to CBI. During further investigation, witnesses were again examined and their statements were recorded before the Magistrate. Both sets of statements recorded during investigation by state police as well as CBI unequivocally disclose the role of the opposite party-Rajesh Sardar in the crime. Witnesses state he had come armed at the spot along with others. He participated in the assault.

It is trite law when there are ample materials on record to show an accused is a member of an unlawful assembly whose conduct show its members shared the common object to murder, specific overt act played by each one of them is immaterial. Learned Judge failed to consider the nature of accusation involving constructive liability under section 149 of the Indian Penal Code and the evidence collected in support thereof. He misdirected himself in making an enquiry with regard to specific overt act of the opposite party-Rajesh Sardar when he was charged with the offence of murder read with Section 149 of the Indian Penal Code.

Furthermore, opposite party-Rajesh Sardar was barely 2½ months in custody when he was released on interim bail. Gravity of the offence where a number of persons were injured and one had died due to gunshot injury was wholly ignored while granting bail to the said opposite party.

For the aforesaid reasons, we are of the opinion impugned orders granting bail to opposite party-Rajesh Sardar suffers from gross

perversity in appreciating the nature of accusation involving constructive liability and is liable to be set aside.

Accordingly, orders dated 22.10.2021 & 19.01.2022 are set aside.

Opposite party-Rajesh Sardar is directed to surrender before the court below within seven days from date 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) 630 of 2022 is thus disposed of.

In Re : C.R.M. (DB) 628 of 2022

Petitioner-Central Bureau of Investigation (CBI) has assailed order granting interim bail dated 29.10.2021 as well as order dated 19.01.2022 whereby the interim bail was confirmed to opposite party-Ajoy Bar.

Mr. S. V. Raju, learned Additional Solicitor General along with Mr. Samrat Goswami, learned advocate for the Central Bureau of Investigation submits the impugned orders suffer from gross perversity and are liable to be set aside. Learned Judge failed to consider the gravity of the offence and materials collected in course of investigation which clearly disclose opposite party-accused was a member of the unlawful assembly and had come to the spot sharing the common object to murder. Opposite party alongwith others had indiscriminately assaulted a number of persons and had fired at one Sourav Bar. As a result, Sourav died. It is further contended opposite party-Ajoy Bar was in custody for about 5½ months and was granted interim bail pending investigation by CBI.

Mr. Angshuman Chakraborty, learned advocate appearing for the opposite party-Ajoy Bar submits the opposite party-accused had cooperated during investigation and after considering the statements recorded under Sections 161/164 of the Code of Criminal Procedure, the Sessions Judge released him on bail. This court may not substitute its discretion in place of that of the Sessions Court particularly when it enures to liberty of an individual.

We have considered the rival submissions in the light of the materials on record. Opposite party-Ajoy Bar has been named as an accused in the FIR. It is alleged he along with others had come to the spot being armed with various weapons including firearms and had assaulted the de-facto complainant viz. Rup Kumar Bar and others. Sourav Bar, son of Rup Kumar Bar intervened. Thereupon, he was fired and died at the spot. Statements of witnesses were recorded under Sections 161/164 of the Code of Criminal Procedure during investigation conducted by state police. Subsequently, upon order passed by this court in WPA (P)142, 143, 144, 145, 146, 147, 148, 149 & 167 of 2021, investigation was transferred to CBI. During further investigation, witnesses were again examined and their statements were recorded before the Magistrate. Both sets of statements recorded during investigation by state police as well as CBI unequivocally disclose the role of the opposite party- Ajoy Bar in the crime. Witnesses state he had come armed at the spot along with others. He participated in the assault.

It is trite law when there are ample materials on record to show an accused is a member of an unlawful assembly whose conduct show its members shared the common object to murder, specific overt act played by each one of them is immaterial. Learned Judge failed to consider the nature of accusation involving

construction liability under section 149 of the Indian Penal Code and the evidence collected in support thereof. He misdirected himself in making an enquiry with regard to specific overt act of the opposite party-Ajoy Bar when he was charged with the offence of murder read with Section 149 of the Indian Penal Code.

Furthermore, gravity of the offence where a number of persons were injured and one had died due to gunshot injury was wholly ignored while granting bail to opposite party-Ajoy Bar.

Sessions Judge while granting bail also relied on a purported order passed in CMC 500 of 2021 which has no relevance to the case clearly exposing his non-application of mind.

For the aforesaid reasons, we are of the opinion, impugned orders granting bail to opposite party-Ajoy Bar suffers from gross perversity in appreciating the nature of accusation involving constructive liability and is liable to be set aside.

Accordingly, orders dated 29.10.2021 & 19.01.2022 are set aside.

Opposite party-Ajoy Bar is directed to surrender before the court below within seven days from date 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) 628 of 2022 is thus disposed of.

In Re : C.R.M. (DB) 628 of 2022

Mr. S. V. Raju, learned Additional Solicitor General along with Mr. Samrat Goswami, submits opposite party-Chiranjit Roy @ Chiran Roy is the principal accused. Due to his political affiliation he has been screened in course of investigation by state police. As a result, his principal role in the crime did not emerge during such

investigation. Pursuant to direction given by this court in WPA (P)142, 143, 144, 145, 146, 147, 148, 149 & 167 of 2021, CBI took over further investigation. In course of further investigation, statements of witnesses were recorded under Sections 161/164 of the Code of Criminal Procedure. In their statements, the witnesses stated opposite party-Chiranjit Roy @ Chiran Roy was the principal accused who had fired at the victim viz. Sourav Bar resulting in his death. Learned Judge failed to consider the aforesaid clinching materials and referring to a non-existent order passed in CMC 500 of 2021 enlarged opposite party-accused on bail. He accordingly, prays for cancellation of bail.

Mr. Angshuman Chakraborty, learned advocate appearing for the opposite party-Chiranjit Roy @ Chiran Roy submits statements of the witnesses recorded under Sections 161/164 of the Code of Criminal Procedure during further investigation by CBI ought to be taken with a pinch of salt. They were recorded seven months after the incident. Political animosity cuts both ways. It is contended CBI was utilised to falsely implicate opposite party-Chiranjit Roy @ Chiran Roy in the instant case.

In reply, learned Additional Solicitor General strenuously contended the aforesaid investigation was a biased one. Accordingly, this Court in WPA (P)142, 143, 144, 145, 146, 147, 148, 149 & 167 of 2021 transferred the investigation to Central Bureau of Investigation (CBI). During further investigation statements of witnesses were again recorded and name of opposite party-Chiranjit Roy @ Chiran Roy as the principal accused who shot at the deceased transpired.

We find opposite party-Chiranjit Roy @ Chiran Roy was named by the injured eyewitness in the FIR itself. Rup Kumar Bar in his FIR stated opposite party-Chiranjit Roy @ Chiran Roy along with others had come to the spot with arms. They assaulted him and

others. When his son viz. Sourav Bar intervened, the miscreants shot at him. As a result, Sourav died. During investigation by state police statements of the de-facto complainant and other witnesses were recorded under Sections 161/164 of the Code of Criminal Procedure. Most of them had recorded presence of opposite party-Chiranjit Roy @ Chiran Roy by referring him in his alias i.e. Kiran Roy. Only development in course of further investigation by CBI is emergence of the aforesaid accused as the principal offender who had shot at the victim. Even if such role is considered to be an embellishment, consistent version emerging from the FIR as well as statements of witnesses during investigation by state police and CBI show presence of opposite party-accused as a member of the unlawful assembly and his active role in the crime.

Learned Judge failed to appreciate the nature of accusation which relates to constructive liability punishable under Section 149 of the Indian Penal Code. When there are ample evidence to show the accused as a member of the unlawful assembly and had shared the common object to murder, it is not necessary for the prosecution to demonstrate specific overt act *qua* an accused. The court below failed to appreciate this proposition of law and proceeded to grant bail to the opposite party-Chiranjit Roy @ Chiran Roy on the premise no overt act has been attributed to him.

Even on such factual score we hasten to add the court had misconstrued the statements of witnesses which clearly show active participation on the part of the opposite party in the assault and murder. Gravity of the offence and nature of accusation are relevant considerations while granting bail. The court below had failed to apply its mind to the ambit and contours of the offence alleged in the case

and the materials collected in support of such accusation *qua* opposite party-Chiranjit Roy @ Chiran Roy.

Sessions Judge while granting bail also relied on a purported order passed in CMC 500 of 2021 which has no relevance to the case clearly exposing his non-application of mind.

For the aforesaid reasons, we are of the opinion orders dated 29.10.2021 & 19.01.2022 are perverse and liable to be set aside.

Opposite party-Chiranjit Roy @ Chiran Roy is directed to surrender before the court below within seven days from date 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) 629 of 2022 is thus disposed of.

We are informed that the case has been committed to the Court of Sessions. To ensure there is no delay in the trial, we direct the trial court to take necessary steps for consideration of framing of charge at the earliest and in the event charge is framed to take the proceeding to its logical conclusion without granting unnecessary adjournments to either of the parties.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)