

89 20.04.2022
(AD) Court No.29

C.R.M. (DB) 809 of 2022

In Re: - An application under Section 439(2) of the Code of Criminal Procedure, 1973.

And

In the matter of: - Arif Ahmed Khan

...petitioner.

Mr. Pawan Kumar Gupta

Mr. S. Roy Chowdhury

Ms. Shalini Mukherjee

... for the petitioner.

Mr. Rudradipta Nandy

... for the State.

Petitioner seeks cancellation of the order granting bail dated March 8, 2022 passed in Criminal Misc. Case No.401 of 2022 by the learned Sessions Judge, Howrah.

Learned Advocate appearing for the petitioner submits that a criminal case was lodged against the private opposite party. It is thereafter that the private opposite party ensured the murder of the victim. He submits that the learned Sessions Judge did not take into consideration the materials in the case diary. The learned Sessions Judge failed to appreciate the gravity of the offence and the involvement of the private opposite party therein. The learned Sessions Judge also misread the period of detention of the private opposite party.

It is contended on behalf of the petitioner that the police are not conducting the investigations properly and that, a writ petition with regard thereto is pending before this Hon'ble Court.

None appears for the private opposite party despite service.

Affidavit of service filed in Court be taken on record.

Learned Advocate appearing for the State submits that

the private opposite party is implicated in the offence of the murder. The private opposite party stands to gain out of the murder. There is a previous police complaint against the private opposite party.

We called upon the State to place before us the statements recorded under Section 161 or 164 of the Code of Criminal Procedure of any person implicating the private opposite party in the incident.

Learned Advocate appearing for the State draws the attention of the Court to the statement of one Nizam Ali recorded under Section 161 of the Code of Criminal Procedure. He also refers to two other statements.

In none of the statements that we have perused did we come across any material implicating the private opposite party to be at the spot or to be involved in the incident directly. The case diary as on date does not have any statement recorded under Section 164 of the Code of Criminal Procedure.

In such circumstances, we are unable to return a finding that the learned Sessions Judge erred in granting bail to the private opposite party.

Accordingly, the prayer for cancellation of bail is rejected.

C.R.M. (DB) 809 of 2022 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)