

11.05.2022
02
Ct. No. 29
KAUSHIK

C.R.R. 1217 of 2022
in
C.R.M.(A) 1616 of 2022

In Re : Court on its own motion

..... petitioner

Mr. Mrityunjoy Chatterjee
Mr. Nazar Chowdhury
Mr. M. A. Salik
....for the petitioner

Mr. Sudip Kumar Ghosh
Mr. Bitasok Banerjee
....for the State

CRR 1217 of 2022 and CRM(A) 1616 of 2022 are taken up for consideration analogously as they emanate out of the same police case.

In CRM(A) 1616 of 2022, two petitioners were before Court seeking relief of anticipatory bail on the ground that another co-accused, who is said to be the principal accused, was granted anticipatory bail by the Jurisdictional Court.

Recording such contention on behalf of such petitioner on April 8, 2022 and after considering the materials in the case diary, we issued a Rule against the person who was granted anticipatory bail by the Vacation Judge on November 5, 2020. Such Rule is CRR 1217 of 2022.

He heard the advocates for the three accuseds involved, two in the application for anticipatory bail and one in the Rule issued.

Affidavit-in-opposition filed on behalf of the person involved in the Rule is taken on record.

The police case involves murder of a person. Firearms were used in the murder. Post mortem report of the victim depicts that the death was due to firearms injuries.

There are materials in the case diary implicating all the three accuseds. There are statements recorded under Section 161 of the Code of Criminal Procedure (Cr.P.C.) implicating all the co-accuseds before us.

The police case is of May 24, 2018. The accused involved in the Rule approached the Vacation Judge on November 5, 2020 with a prayer for anticipatory bail.

The learned Vacation Judge was pleased to grant anticipatory bail to such person with the following observations:

“It appears from the record that co accused persons are enjoying bail and the investigation is pending since 2018, so further detention of the present petitioner is not required for the purpose of investigation. Hence, the prayer for anticipatory bail of the accused/petitioner is allowed.”

Learned advocate for such co-accused submits that, an application for cancellation of bail and anticipatory bail are

allowed by the Superior Court when any of the three following are satisfied :-

- i) There is an illegality in the impugned order;
- ii) There is suppression of material facts by the accused while obtaining the impugned order;
- iii) The accused is guilty of post bail misconduct.

The last two grounds are not attracted in the present case.

So far as the illegality of the impugned order is concerned, it appears that the learned Judge granting the prayer for anticipatory bail did not into account the long absconsion of the petitioner, the materials in the case diary implicating the petitioner and the fact that other co-accuseds, who were enlarged on bail, were granted so by reason of failure of the police to file charge-sheet within the statutory period.

A serious crime is involved in the facts of the present case. All the co-accuseds are involved therein, as prima facie appearing from the materials in the case diary.

In such circumstances, we allow CRR 1217 of 2022. The order granting anticipatory bail to the two co-accuseds involved therein on November 5, 2020 stands cancelled.

So far as the petitioners in CRM(A) 1616 of 2022 are concerned, we are unable to afford the facility of anticipatory bail in view of the long absconsion of such petitioners and the

involvement of the petitioners in the offences alleged as appearing from the materials in the case diary.

Accordingly, prayer for anticipatory bail of the petitioners is rejected and the application being CRM (A) 1616 of 2022 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)