

05.07.2022.
47.
Ct.No.28.
as/akd/PA

C.R.M. (DB) 1171 of 2022

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

In the matter of : Annu Das.

... Petitioner.

Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Mr. Biplab Talukder,
Mr. Pritam Chatterjee.

...for the Petitioner.

Mr. Saswata Gopal Mukherjee, Id. P.P.,
Ms. Faria Hossain,
Mr. Anand Keshari.

...for the State.

Mr. Debasis Kar,
Mr. Husen Mustafi,
Mr. Subhajit Chowdhury,
Mr. Arka Tilak Bhadra.

...for the O.P.No.2.

The instant case portrays of a glaring example how an accused has successfully manipulated the process of law and thereby evaded incarceration notwithstanding addition of a graver offence of murder to the array of offences.

A thumbnail sketch of chronology of events which clearly elucidates the aforesaid situation is as follows:-

- (i) On 4.5.2022, first information report was registered against the opposite party no.2 and others for commission of offence punishable under Sections 341/323/325/308/34 of the Indian Penal Code alleging they had mercilessly assaulted the deceased

whose sole fault was to distribute of food and other essentials to members of public during Covid-19 and upload his effort on social media.

- (ii) While the victim was struggling for his life in SSKM Hospital, on 12.5.2020 opposite party no.2 was released on bail after being in detention for barely five days.
- (iii) On 19.5.2020 the victim succumbed to his injuries and investigating agency made a prayer for addition of offence under Section 302 IPC. But learned Magistrate, for reasons bests known to him, added a lesser charge, namely, Section 304 IPC to the array of offences.
- (iv) Petitioner assailed such order before this Court in CRR 1081 of 2020 and pursuant to order passed by this Court, offence under Section 302 IPC came to be added and supplementary charge sheet was filed in the matter.
- (v) In view of addition of graver charge under Section 302 IPC, opposite party no.2 prayed for pre-arrest bail before a co-ordinate Bench of this Court. In view of the law declared in ***Pradeep Ram Vs. State of Jharkhand & Anr.***¹, the Bench by an order dated 09.10.2020 disposed of the prayer of the petitioner directing as follows:-

“We dispose of the application by allowing the petitioners to surrender before the trial court within two weeks from date subject to condition that the

¹ (2019) 17 SCC 326

petitioner Nos.2 to 5 shall not enter within the jurisdiction of Belghoria Police Station except for the purpose of meeting the investigating officer or attending the Court as the case may be and shall co-operate with the investigation and in so far as the petitioner No.1 is concerned, since he is presently an employee of Kamarhati Municipality within Belghoria Police Station, we permit him to attend his place of work but all other conditions as stipulated above shall apply to him till he obtains the regular bail from the trial Court. During this period they shall not tamper with the evidence or intimidate the witnesses. The trial Court shall decide the application for bail independent of the observations made by us in this order.

Learned Counsel for the de-facto complainant submits that the Court may be influenced by the order we have passed in the proceeding. The consideration for anticipatory bail and regular bail are different and we do not want to add anything further.”

- (vi) Instead of surrendering in terms of the aforesaid direction, opposite party no.2 and others took out a clarificatory application before the said Bench. On 18.12.2020 the Bench modified its earlier order and directed as follows:-

“In view thereof, we modify our earlier order dated 9th October, 2020 to the extent that the applicant should surrender before the appropriate Sessions Court on or before 23rd December, 2020 and the Sessions Court shall decide the application for bail, if filed, in accordance with law. The conditions imposed in the original order also stand recalled.”

- (vii) Some of the accused persons (but not the opposite party no.2 herein) approached the Apex Court in SLP

(Crl.) Nos.738-739/2021. By order dated 3.2.2021 the Apex Court was pleased to dismiss the Special Leave Petition observing as follows:-

“However, if the petitioners are ready and willing to surrender before the competent court, they are at liberty to do so and thereafter, they can move an application for regular bail before that Court.”

(viii) Finally, after a lapse of ten months on 29.12.2021 opposite party no.2 appeared before the learned Magistrate who by misreading the aforesaid orders of this Court granted bail to the opposite party no.2 on the selfsame day, inter alia, observing as follows:-

“The accused person got bail of Rs.10,000/- with two sureties of Rs.5,000/- each of like amount from the Hon’ble High Court vide C.R.M. No.7350/20 on condition to follow the direction as mentioned in the order of the Hon’ble High Court vide C.R.M. No.7350/20.”

Mr. Sabyasachi Chatterjee, learned Advocate appearing for the petitioner submits the impugned bail order suffers from clear non-application of mind. Opposite party no.2 had not been granted bail by this Court in CRM 7350 of 2020. The Magistrate misread the order of this Court and mechanically granted bail to the opposite party no.2. On the contrary, opposite party no.2 had been directed to surrender before the court below and pray for regular bail in the light of addition of graver offence under Section 302 IPC. Opposite party no.2 resorted to various subterfuges and delayed surrender before the court below. Hence, his bail may be cancelled.

Mr. Debasish Kar, learned Advocate appearing for the opposite party no.2 submits his client had been granted pre-arrest bail in CRM 7350 of 2020. Direction to surrender before the trial court within two weeks and pray for regular bail was modified by this Court vide order dated 18.12.2020 and he was directed to appear before the appropriate Sessions Court on or before 23.12.2020. Subsequently, the Apex Court gave liberty to co-accuseds to appear before the competent court and pray for regular bail. Due to pandemic conditions his client was unable to surrender within the time stipulated and the bail granted to him ought not to be cancelled.

Learned Advocate appearing for the State submits upon addition of graver offence under Section 302 IPC, opposite party no.2 was directed to appear and pray for regular bail within two weeks vide order dated 09.10.2020 in CRM 7350 of 2020. He failed to do so. Subsequently, on his application he was directed to surrender before the appropriate Sessions Court on or before 23.12.2020. He again failed to comply with such condition. After a lapse of one year, he appeared before the Magistrate who without considering the merits of the case released him on bail on the self same date.

The aforesaid factual matrix show opposite party no.2 was initially arrested on 7.5.2020 and after detention for merely five days was enlarged on bail on 12.5.2020. Subsequently, the victim died and pursuant to direction given by this Court in CRR 1081 of 2020 offence under Section 302 IPC was added and supplementary charge sheet was filed. At that juncture, opposite

party no.2 and other accused persons instead of appearing before the learned Magistrate and praying for regular bail, approached this Court seeking pre-arrest bail in CRM 7350 of 2020. A co-ordinate Bench of this Court disposed of the application directing the opposite party no.2 and others to surrender before the trial court within two weeks from that day and pray for regular bail. Trial court was directed to decide the bail prayer independent of the observations made in the said order. Opposite party no.2 and others sought a clarification of the said order and on 18.12.2020 the co-ordinate Bench modified its earlier order dated 09.10.2020 and directed them to surrender before the appropriate Sessions Court on or before 23.12.2020. The Sessions Court was directed to decide the bail application in accordance with law. Other conditions imposed in the order dated 09.12.2020 were recalled. Some of the accuseds unsuccessfully approached the Apex Court and the said Court by order dated 3.12.2021, while dismissing their application, observed they are at liberty to appear before the competent court and pray for regular bail.

In spite of a lapse of more than a year since 18.12.2020, opposite party no.2 failed and/or neglected to appear and pray for regular bail before the Court below. Finally, he appeared before the learned Magistrate on 29.12.2021 and was released on bail on the selfsame day. Learned Magistrate appears to have wholly misread the directions of this Court in CRM 7350 of 2020. By no stretch of imagination, it can be said opposite party no. 2 had been granted bail by this Court in CRR 7350 of 2020

as observed by the learned Magistrate. Such finding of the learned Magistrate is wholly perverse and contrary to the orders passed by this Court in CRM 7350 of 2020. This displays gross non-application of mind on the part of the Magistrate while considering the prayer for bail. On this score alone, the bail granted to opposite party no.2 is liable to be cancelled.

Learned Magistrate while considering the bail prayer of opposite party no.2 was directed to examine the issue independently and in accordance with law. There is no reflection in the bail order with regard to addition of the grave offence under Section 302 IPC and the involvement of the opposite party no.2 in the murder. Moreover, conduct of opposite party no.2 in failing to comply with the directions of this Court in CRM 7350 of 2020 has also not been considered.

As the issue relates to the deprivation of liberty, we have independently made an endeavour to examine whether there is prima facie involvement of opposite party no.2 in the graver offence of murder which was subsequently added to the array of charges. Statements of witnesses categorically show presence of the opposite party no.2 amongst the accused persons who being variously armed and had mercilessly assaulted the victim. As a result, he suffered severe injuries and was hospitalised. Finally, he succumbed to his injuries. Post mortem report and other medical papers support the ocular version of the witnesses.

In view of the aforesaid incriminating materials on record and the change in gravity of accusation from Section 308 IPC (attempt to commit culpable homicide) to Section 302 IPC i.e.

murder, we are of the opinion learned Magistrate was wholly unjustified in enlarging the opposite party no.2 on bail on the selfsame day.

Accordingly, impugned order dated 12.5.2020 is cancelled.

Opposite party no.2 is directed to appear before the learned Magistrate and pray for regular bail within seven days from date failing which the investigating agency shall take all necessary steps for his apprehension in accordance with law.

The application being CRM (DB) 1171 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)