

07.11.2022.
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(Allowed)

C.R.M. (DB) 1218 of 2022

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

In the matter of : Sk. Mehtab Hossain @ Sk. Mehtab Hussain.
.... Petitioner.

Mr. Shibaji Kr. Das,
Ms. R. Sreemani.

...for the Petitioner.

Md. Sabir Ahmed,
Mr. Abdur Rakib.

...for the learned
Assistant Public Prosecutor.

Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Das.

...for the OP.No.2.

Mr. Saswata Gopal Mukherjee, Id. P.P.,
Mr. Nuguive Ahmed, Id. A.P.P.,
Ms. Trina Mira.

....for the State.

Order dated 19.04.22 passed by the learned Additional Chief Judicial Magistrate-in-charge, Alipore granting bail to opposite party No.2 has been assailed.

Learned Advocate for the petitioner submits his client is a village civic police volunteer who was assigned the duty to monitor traffic in the locality. Opposite party no.2 in an inebriated condition illegally parked his vehicle causing traffic congestion. Petitioner had requested him to shift the vehicle whereupon he assaulted the petitioner with a broken beer bottle on his head and chest causing serious injuries.

Petitioner was treated in hospital and stitches were given. Opposite party No.2 was arrested and produced before the Magistrate on 16.04.2022. He was remanded to police custody till 18.04.2022. On that day, upon consideration of the materials on record including the Case Diary and noting the gravity of the offence, involving assault on a village civic volunteer who was maintaining law and order, the court below rejected the bail prayer. On the very next day, noting that learned Assistant Public Prosecutor had no objection and opposite party no.2 had suffered considerable detention, the latter was released on bail. Hence, the bail may be cancelled.

In this backdrop, we called upon a report from the learned Assistant Public Prosecutor to show cause why he had not objected to the bail application. Pursuant to our order, learned Assistant Public Prosecutor has submitted a report, inter alia, stating he had produced the Case Diary and had pointed out the statement of the victim as well as the injury report. Learned Magistrate had questioned him whether the victim was hospitalised or not to which he had replied in the negative. It is also averred in the affidavit that he had recorded objection to the bail application.

Opposite party no.2 has responded to the cancellation of bail application by way of an affidavit-in-opposition. In the opposition, he contended that the petitioner had demanded a bribe which he had refused. Thereupon, he was assaulted and falsely implicated in the instant case. Injuries on the victim were simple.

We have considered the materials on record including the impugned order.

Ex facie, the impugned order is a perverse one. Petitioner had been arrested and produced before the Magistrate barely three days ago on 16.04.2022. He was remanded to police custody for two days. On 18.04.2022, adverting to the case diary and the gravity of the offence, bail prayer of the opposite party no.2 came to be rejected.

Under such circumstances, we are at a loss to understand how the learned Magistrate could refer to “*considerable period of detention*” as a ground to release the opposite party no.2 on bail. In doing so, he reversed his earlier order rejecting bail passed the day before. Such prevaricating stance on the part of a judicial authority is not only perverse but strikes at the root of consistency and erodes confidence in the criminal justice delivery system.

That apart, we also note that the order is prefaced with an incorrect finding that the Assistant Public Prosecutor had not opposed the bail prayer.

Pursuant to our direction, the Assistant Public Prosecutor has unequivocally stated on oath that he had produced relevant materials on record and opposed the prayer for bail. Even if such stance of the Prosecutor is ignored, there is no justification for the Magistrate to have taken a contrary stance and release opposite party no.2 on bail after his bail prayer was refused on the day before.

Independent of the perversities in the impugned order, we have also applied our minds to the materials collected in the course of investigation and the plea taken by the opposite party no.2 with regard to his false implication. Although the opposite party no.2 claimed that a bribe was demanded and he was manhandled, there is no explanation how the village police civic volunteer had suffered serious injuries on his head and chest which required multiple stitches. On the other hand, the materials collected during investigation including the injury report clearly expose the hollowness of the plea of false implication of the opposite party no.2. Materials collected in the course of investigation show opposite party No.2 had assaulted the petitioner, who was seeking to maintain law and order with a broken beer bottle on vital parts of his body viz., head and chest which underscores his intention to murder. Intention to murder is to be inferred from the conduct of the accused and other attending circumstances e.g. nature of weapon used, situs of injury etc. Fact that injuries are simple cannot be the sole criteria in that regard.

Conduct of opposite party no.2 shows he is a daring individual who perpetrated mindless violence on a helpless village police civic volunteer. Gravity of the offence and involvement of the opposite party no.2 therein is self evident. Release of a person of such daring nature after detention of three days only would affect the moral of the police volunteers and disrupt orderly administration of justice.

For the aforesaid reasons, we are of the opinion the impugned order suffers from perversity and is wholly unjustified in the facts of the case. The order is set aside. Opposite party no.2 is directed to surrender forthwith not later than seven days from date before the learned Magistrate and pray for regular bail in accordance with law.

In the event, opposite party no.2 surrenders before the Magistrate within the stipulated time, Magistrate shall consider his bail prayer independently and in accordance with law.

The application for cancellation of bail is, thus, allowed.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)