

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 1657 of 2022

Kashif Humair @ Kashif Humari

Vs.

State of West Bengal

For the Petitioner : Mr. Debashis Roy
Mr. Rajesh Upadhyay
Mr. Abhishek Bhandari

For the State : Mr. Saibal Bapuli
Mr. Arijit Ganguly
Mr. Bibaswan Bhattacharya

Heard on : 20.05.2022

Judgment on : 20.05.2022

Jay Sengupta, J.:

This is an application challenging an order dated 10.05.2022 passed by the learned Chief Judge, City Sessions Court, Calcutta Criminal Misc. Case 84 of 2022 corresponding to Hastings Police Case No. 33/22 dated 05.02.2022 under Sections 279, 304 (II), 427 of the Penal Code, thereby cancelling the interim bail granted in favour of the petitioner by the learned Additional Metropolitan Magistrate, Calcutta on 14.02.2022.

Learned senior counsel appearing on behalf of the petitioner submits as follows. An FIR was lodged on 05.02.2022 alleging that the present petitioner, in a drunken state, was driving a car in high speed and the victim was standing near his truck. The petitioner's car hit the victim and he died on the spot. Later, breath analyzer test conducted on the petitioner purportedly showed that he was drunk. The petitioner was arrested in the night of 4-5.02.2022. Thereafter, he was granted interim bail on 14.02.2022. A G.D. Entry was lodged at the behest of a witness of the case on 19.02.2022. It was alleged by the witness that on the day when the petitioner went to the Bankshall Court to depose in a case, he was threatened by two unknown persons. Out of fear, he allegedly went away from there. The prosecution thereafter prayed for cancellation of bail of the present petitioner. By the impugned order, the interim bail was cancelled mainly on the ground that the learned Magistrate had erred in granting bail in the first place. The issue of threatening or, for that matter, the lodging of the G.D. Entry did not seem to have swayed the learned Sessions Judge in rejecting the bail. The learned Sessions Judge did not believe in the allegation of threats. However, while discussing about the alleged threats, it was wrongly recorded by the learned Sessions Court that it was a threatening phone call that was received by the said witness. Thus, there are no exceptional circumstances which could have prompted the learned Sessions

Judge to cancel the bail already granted to the petitioner. In fact, after the G.D. Entry was lodged, the petitioner had written to the concerned authorities about a possible attempt to create circumstances so that his bail was cancelled.

Learned counsel for the State relies on the case diary and submits as follows. The order granting bail to the petitioner should have been cancelled on both counts. First, the Magistrate should not have granted the bail. Secondly, the post-bail conduct of the petitioner was reprehensible. In a case, under Section 304 (II) it is not very common to see that an accused is granted bail in a matter of 9 or 10 days, that too when the investigation is pending. Because of the threat perception which the witnesses are having to deal with, the concerned witness is not turning up for TI Parade. Only if the petitioner is again taken into custody will the threat perception go and the investigation of the case could be concluded properly after completion of the TI Parade. There is no illegality in the order passed by the learned Sessions Court.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition and the case diary.

The prosecution case is that the petitioner, in a drunken state state, drove his car in high speed and in a rash and negligent manner dashed into the driver of a lorry who was there near his vehicle. The

breath analyzer test showed that the petitioner was in an inebriated condition.

The prime witness to the incident is the khalasi of the vehicle. He lodged a G.D. Entry on 19.02.2022 that he was threatened by unknown persons when he went to depose before the court. Actually, the date was fixed for T.I. Parade and this was loosely mentioned by the said witness as the date of evidence. It is also fact that after this on several occasions the witness did not turn up for T.I. Parade.

It is trite law that a superior court can cancel a bail granted by a learned Magistrate on two grounds - first, if the order granting bail was bad in law and secondly, on the post bail conduct of the accused.

If one considers the charge of Section 304 of the Penal Code as a whole, then there would be restrictions on the learned Magistrate to grant bail to an accused charged with such offence, as per Section 437 of the Code. However, in the present case, Part (II) of Section 304 of the Penal Code has been specifically imputed. It has a maximum punishment of 10 years, but is also triable by the Sessions Court. Even if one goes by such truncated version of the charge, it is quite exceptional for an accused facing such a serious offence to be granted bail within 9 or 10 days of arrest, that too at a time when the investigation is still continuing and even TI Parade is not over.

True, the requirement of a witness to identify an accused during investigation, per se, is no ground to deny bail, but in the instant case, it has to be juxtaposed with the post-bail incidents.

Now, let us come to the post-bail conduct of the accused.

The witness in question is purportedly a 'khalasi' of the vehicle. He is not a relative of the victim deceased and can fairly be treated as an independent witness.

Therefore, I find no reason as to why such a witness would lodge a false G.D. Entry that he was threatened on the date when he went to attend the T.I. Parade for identifying the accused. In fact, the G.D. Entry was lodged on 19.02.2022, the date which was fixed for conducting the T.I. Parade. It is also on record that on subsequent dates, he failed to appear.

It is true that the Sessions Court committed an error in referring to the threats as having been made over telephone. But, that does not go to the root of the matter.

However, I am unable to agree with the contention of the petitioner that the learned Sessions Judge had refused to believe the G.D. Entry or, for that matter, the allegation of threats.

The learned Sessions Judge had also given detailed reasons as to why he thought that the Magistrate erred in granting bail to the petitioner in such a serious matter, especially at the particular stage.

In view of the above, I do not find any illegality in the impugned order.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

At this stage, the learned senior counsel for the petitioner submits that the petitioner would like to surrender before the learned trial court immediately and appropriate steps may be taken by the investigating officer of the case to have the T.I. Parade done.

Therefore, it is further directed that in the event the petitioner surrenders before the learned trial court, all endeavour shall be made by the learned trial court as well as the investigating officer of the case to have the T.I. Parade conducted as expeditiously as possible.

The learned Trial Court shall be at liberty to direct the police to provide security to the said witness in coming to Court to depose or to attend TI Parade if it deems fit.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

Parties shall act on a server copy of this order, duly downloaded from the official website of this Court.

(Jay Sengupta,J.)