

26.09.2022
tkm/ct 28
sl no. 52

C.R.M. (DB) 1334 of 2022

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

And

In Re : Pradip Kumar Mondal

..... petitioner

Mr. Bikram Mitra

..... for the petitioner

Mr. Angshuman Chakraborty

Mr. S S Saha

..... for OP nos. 2, 3 and 4

Mr. Sudip Ghosh

Mr. A K Datta

..... for the State

Inadvertent errors had crept into order dated 19.09.2022.

In the 2nd line of 4th paragraph the words “order dated 8.10.2021”
be read as “order dated 28.03.2022”. Other portions of the order
shall remain the same.

Order dated 2.04.2022 passed by the learned Sessions
Judge, Fast Track, 1st Court at Diamond Harbour, South 24
Parganas granting bail to opposite party nos. 2 to 4 herein has
been assailed.

Learned lawyer for the petitioner submits there was enmity
between the deceased and the opposite party nos.2 to 4. Out of
grudge, the opposite party nos.2 to 4 had committed the murder.
There was recovery of weapon of offence and blood stained articles
of the deceased from opposite party no.2. Bail prayer of the
opposite party nos.2 to 4 were rejected on 24.2.2022. Without any
change in circumstances, the court below by the impugned order
granted bail to the said opposite parties.

Learned lawyer for the State opposes the prayer for bail. He produces the case diary.

Learned lawyer for opposite party nos. 2 to 4 submits there is no direct evidence connecting his clients with the crime. Articles recovered from the petitioner are of everyday use and there is nothing to show that they belonged to the deceased.

We have considered the materials on record. FIR discloses there was enmity between the deceased and the opposite party nos. 2 to 4. From the FIR it also appears that on the fateful day deceased was proceeding to his place of business and he was carrying various documents as he had intended to go to court. En route, he was murdered. There is no eye-witness to the incident. However, in the course of investigation, on the leading statement of opposite party no. 2 weapon of offence i.e blood stained iron rod and documents carried by the deceased were recovered. Recovery of the documents and other personal belongings of the deceased on the leading statement of opposite party no. 2 is probalised from the averments in the FIR that he was carrying the said documents at the time of occurrence. These incriminating materials were not considered by the court below while granting bail to opposite party no.2. The court merely observed as the witnesses are relations of the deceased, there is no apprehension of tampering and investigation is complete. Clinching character of the evidence collected against opposite party no. 2 during investigation was wholly ignored. Hence, the order granting bail to opposite party no. 2 suffers from perversity and is liable to be set aside.

Apart from enmity and motive to commit the crime there is no other incriminating material collected against opposite party nos. 3 and 4. Possibility of their false implication due to prior enmity also cannot be ruled out. They do not stand on the same footing with opposite party no. 2. Hence, we are not inclined to set the bail order so far as opposite party nos. 3 and 4 are concerned.

In view of the aforesaid discussion, impugned order dated 20.4.2022 granting bail to opposite party no. 2 is set aside. However bail granted to opposite party nos. 3 and 4 are not disturbed.

Opposite party no. 2 is directed to forthwith surrender before the court below failing which investigating agency as well as the said court shall resort to appropriate process for his apprehension in accordance with law.

Needless to mention petitioner and other witnesses shall be entitled to police protection in terms of order dated 28.3.2022 in WPA 8593 of 2021.

With the aforesaid directions, CRM (DB) 1334 of 2002 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)