

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRM (DB) 1519 of 2022
The Central Bureau of Investigation
Vs.
Saiyad Khan

With

CRM (DB) 1520 of 2022
The Central Bureau of Investigation
Vs.
Saddam Hussain Laskar @ Saddam

With

CRM (DB) 1522 of 2022
The Central Bureau of Investigation
Vs.
Satyanarjan Mondal @ Kadan

With

CRM (DB) 1525 of 2022
The Central Bureau of Investigation
Vs.
Mozzafar Shiekh @ Minu

With

CRM (DB) 1527 of 2022
The Central Bureau of Investigation

Vs.
Saiyed Mohiul Islam @ Lalan

For the CBI/Petitioner	: Mr. Kallol Mondal, Adv.
For the Opposite Parties	: Mr. Jayanta Narayan Chatterjee, Adv. Mr. Apalak Basu, Adv. Ms. Moumita Pandit, Adv. Ms. Nandini Chatterjee, Adv. Mr. Nazir Ahmed, Adv. Mr. Supreem Naskar, Adv. Ms. Jayashree Patra, Adv. Ms. Sreeparna Ghosh, Adv. Ms. Pritha Sinha, Adv.

Heard on	: August 12, 2022
Judgement on	: August 18, 2022

DEBANGSU BASAK, J.:-

1. We have heard five applications for cancellation of anticipatory bail analogously as they emanate out of the same police case. CRM (DB) 1519 of 2022, CRM (DB) 1520 of 2022 and CRM (DB) 1527 of 2022 have been filed challenging the order dated March 2, 2022 while CRM (DB) 1522 of 2022 and CRM (DB) 1525 of 2022 have been filed challenging the order dated February 28, 2022.

2. Learned advocate appearing for Central Bureau of Investigation (CBI) has submitted that, the learned Judge passed the orders granting anticipatory bail to the private opposite parties mechanically and without considering the relevant materials in the case diary. He has submitted that, the victim

died on May 29, 2021. He has referred to the primary post mortem report of the victim dated May 29, 2021 and submitted that, the post mortem does not contain correct reasons for the cause of death. The investigations of the police case had been handed over to the Central Bureau of Investigations on August 28, 2021 pursuant an order passed by the Hon'ble High Court relating to post poll violence. Subsequent to CBI having taken over the investigations, witnesses came forward and recorded statements under Section 164 of the Criminal Procedure Code. He has referred to the statements recorded under Section 164 of the Criminal Procedure Code of eye witnesses and submitted that, the victim was assaulted and murdered.

3. In support of the contention that the victim had been murdered, learned advocate appearing for CBI has relied upon the opinion of the All Indian Institute of Medical Sciences dated December 3, 2021. In addition thereto, he has relied upon the statement of the doctor who had conducted the post mortem including the response of the doctor dated October 7, 2021.

4. He has contended that, the medical opinion subsequent to the post mortem report has stated that the victim was murdered. The learned Judge while granting the anticipatory bail had failed

to take into consideration the opinion dated December 3, 2021 and the statements recorded under Section 164 of the Criminal Procedure Code.

5. Learned advocate appearing for CBI has submitted that, CBI filed charge sheet on December 31, 2021. The Court had granted anticipatory bail to two of the opposite parties on February 20, 2022 and three of the opposite parties on March 2, 2022. In both the situations, the learned Judge had failed to take into account the charge sheet submitted by the CBI as well as the materials in the case diary and in particular the statements recorded under Section 164 of the Criminal Procedure Code implicating all the opposite parties.

6. Learned advocate appearing for the opposite parties has submitted that, none of the opposite parties are guilty on any post bail misconduct. He has highlighted the period of time that has elapsed from the date of order granting anticipatory bail to the date of the making of the application for cancellation. He has submitted that, an order cancelling anticipatory bail will seriously prejudice the opposite parties more so when none of the opposite parties are guilty of any post bail misconduct.

7. Learned advocate appearing for the opposite parties has drawn the attention of the Court to the order dated March 2, 2022 passed in Criminal Misc. Case No. 663 of 2022 which is one of the orders granting anticipatory bail to one of the opposite parties. He has submitted that, attention of the Court had been drawn to the fact of filling of charge sheet by the CBI. The Court had the benefit of the case diary. Elaborate submissions had been made on behalf of both the parties before the learned Court. The Court had been assisted by the learned advocate appearing for CBI. Therefore, the contentions of CBI in the present application that the learned Judge had failed to consider the relevant materials in the case diary is misplaced. He has submitted that, elaborate reasons are not required to be given by learned Judge while granting order for anticipatory bail. All the evidence need not be discussed in details. In support of such contentions he has relied upon **2006 volume 3 Supreme Court Cases (Criminal) 397 (Nira Radia vs. Dhiraj Singh and Another)**.

8. Relying upon **2020 volume 2 Supreme Court Cases 743 (Mayakala Dharmarajam and Others vs. State of Telangana and Another)** learned advocate appearing for the opposite parties

has submitted that, bail granted should not be cancelled as none of the grounds for cancellation of bail stands satisfied in the facts of the present case.

9. One Raju Samanta had died on May 29, 2021. A post mortem over his body had been conducted on such date. The local police had registered a First Information Report on June 6, 2021 after receiving a complaint by post. CBI had taken over investigations on August 28, 2021. After chemical examination reports a full and final post mortem report had been submitted by the autopsy surgeon on October 7, 2021. The autopsy surgeon had been examined on October 8, 2021. On October 25, 2021, three persons claiming to be eye witnesses to the incident had recorded statement under Section 164 of the Criminal Procedure Code. In the statements recorded under Section 164 of the Criminal Procedure Code, the three eye witnesses had implicated the petitioners in assaulting the victim.

10. CBI had obtained opinion of a board of doctors from All Indian Institute of Medical Sciences with regard to the death of Raju Samanta and his post mortem report. The board of doctors had submitted an opinion dated December 3, 2021 where, they opined that the victim was murdered.

11. CBI had submitted a charge sheet before the jurisdictional Court on December 31, 2021 naming the petitioners as accused and complicit in the offences.

12. On February 28, 2022 and on March 2, 2022, the opposite parties had been granted anticipatory bail by the Sessions Court. The learned Judge has ascribed similar reasons for the grant anticipatory bail to the opposite parties in the orders. The relevant portion of the order dated February 28, 2022 is as follows :-

“I have gone through the said solemn judgment of Hon’ble Supreme Court in which the direction has been given to hear out such bail application on mercy. I have minutely gone through the charge sheet and have found on the investigation by the CBI do not reveal collection of money by the accused person forcibly. I have also considered the inquest report as well as the PM report and when the materials available in the CD since the investigation is over, I do not find any justification of any custodial interrogation at this stage. The materials available in the CD does not convince this Court to turn down the prayer for anticipatory bail. Hence, prayer for anticipatory bail u/s 438 Cr.P.C stands allowed.”

The relevant portion of the order dated March 2, 2022 is as follows :-

“I have gone through the said solemn judgment of Hon’ble Supreme Court in which the direction has been given to hear out such bail application on mercy. I have minutely gone through the charge sheet and have found on the investigation by the CBI do not reveal collection of money by the accused person forcibly. I have also considered the inquest report as well as the PM report and when the materials available in the CD since the investigation is over and other accused persons are on bail, I do not find any justification of any custodial interrogation at this stage. The materials available in the CD does not convince this Court to turn down the prayer for anticipatory bail. Hence, prayer for anticipatory bail u/s 438 Cr.P.C stands allowed.”

13. While granting bail to the opposite parties, the learned Sessions Court had stated that he had gone through charge sheet and found that CBI did not reveal collection of money by the accused person forcibly. Learned Court had considered the inquest report as well as the post mortem report and other materials available in the case diary. He had held that since investigation was over and other accused persons were on bail, he did not find any justification of custodial interrogation at that stage. He had held that the materials available in the case diary did not convince the Court to turn down the prayer for anticipatory bail.

14. *Mayakala Dharmarajam and Others (supra)* has discussed the factors which are required to be considered while granting bail as well as while cancelling the bail. It has observed as follows :-

“8. In Raghbir Singh v. State of Bihar [Raghbir Singh v. State of Bihar, (1986) 4 SCC 481 : 1986 SCC (Cri) 511] this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would

be justified in cancelling the bail [Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180 : (2013) 4 SCC (Cri) 614] .

10. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant Respondent 2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the appellants. The order of the Sessions Court by which the bail was granted to the appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the appellant tampering with the evidence.”

15. Nira Radia (supra) has observed that, a Court while considering a bail application need not make a detailed and in depth analysis of the materials and findings on their acceptability or otherwise in the order granting bail or refusing the grant of bail.

16. Perversity of the order granting anticipatory bail is one of the grounds that has been recognized for cancellation of such

anticipatory bail. Anticipatory bail granted can be cancelled if it has been established that the Sessions Court did not taken into account relevant facts while granting the order. It can also be cancelled if the order is based on irrelevant facts.

17. In the facts of the present case, learned Judge had failed to into consideration the opinion of the board of doctors of All Indian Institute of Medical Sciences dated December 3, 2021. Such opinion has stated that the victim was murdered. He had taken into consideration the inquest report and the post mortem report of the deceased without taking into consideration the opinion dated December 3, 2021. The case diary had statements recorded under Section 164 of the Criminal Procedure Code of three eye witnesses which the learned Judge did not take into consideration. At least the order of the learned Judge does not reflect that the learned Judge had taken these two materials aspects into consideration at all. The learned Judge had erred in not advertng to these facts in the impugned orders.

18. In such circumstances, we are of the view that, the impugned orders dated February 20, 2022 and March 2, 2022 of the learned Sessions Judge suffers from perversity and therefore, should be set aside. The anticipatory bail granted by such orders

are cancelled. All consequential steps taken pursuant to the grant of anticipatory bail are also cancelled.

19. CRM (DB) 1519 of 2022, CRM (DB) 1520 of 2022, CRM (DB) 1522 of 2022, CRM (DB) 1525 of 2022 and CRM (DB) 1527 of 2022 are disposed of accordingly.

[DEBANGSU BASAK, J.]

20. I agree.

[BIBHAS RANJAN DE, J.]