

20.09.2022
tkm/ct 28
sl no. 38

C.R.M. (DB) 1529 of 2022

In Re : An application for cancellation of bail under section 439(2) of the Cr.P.C. read with section 482 of the Cr.P.C

And

Central Bureau of Investigation

Vs

Debasish Halder @ Deba

Mr. Kallol Mondal

..... for the petitioner /CBI

Mr. Jayanta Narayan Chatterjee

Ms. N Chatterjee

Ms. J Patra

Ms. S Ghosh

..... for the OP/accused

Order dated 9.3.2022 passed by the learned Additional Sessions Judge, Diamond Harbour, South 24 Parganas granting bail to the opposite party-accused has been assailed.

Mr. Mondal, learned lawyer for CBI submits opposite party-accused was one of the persons who had assaulted the victim, Raju Samanta. Opposite party was named in the FIR. He along with others had assaulted the victim who suffered head injury and died. Without considering the gravity of the offence, the learned Judge enlarged the opposite party on bail.

He further submits pre-arrest bail granted to co-accuseds have been cancelled by a Co-ordinate Bench of this court in CRM (DB) 1519 of 2022, CRM (DB) 1520 of 2022, CRM (DB) 15222 of 2022, CRM (DB) 1525 of 2022, CRM (DB) 1527 of 2022. He prays for cancellation of bail to opposite party.

Mr. Chatterjee, learned lawyer for the opposite party-accused submits his client was in custody for 114 days. After

considering the nature of the allegations, period of detention suffered by him and as investigation was complete, he was enlarged on bail.

He further submits grant of bail stands on a different footing from anticipatory bail. Cancellation of pre-arrest bail of co-accuseds, therefore, cannot be a ground to cancel bail granted to his client. There is no allegation of misuse of liberty by him.

We have considered the materials on record. On 6.6.2021, FIR was registered against five accused persons including the opposite party and unknown others alleging that they were notorious goons in the locality. They used to collect money from shop keepers. On 29.5.2021 at 8 a.m when Raju Samanta (son of the de facto complainant) had gone to the local market the aforesaid miscreants had beaten him up. As a result he died. Initially, investigation was conducted by the State police. In the Post mortem doctor opined death was due to the effects of diseased condition of brain and lungs, gut as noted and ante mortem in nature. No final opinion was given. Subsequently, investigation was taken over by CBI on 28.1.2021. During the course of investigation, statements of various witnesses were recorded under sections 161/164 Cr.P.C. Further opinion was taken from Doctor Prasanta Kr. Sarkar who opined death was due to intracranial haemorrhage and diseased condition of lungs, small intestine and kidney. Dr. Prasanta Kr. Sarkar further clarified that haemorrhage may have been caused due to impact of head with hard surface due to accident or beating. Dr. Seema Mondal and Dr. Rathin Hazra,

Assistant Professors Department of Pathology, Diamond Harbour, Government of Medical College and Hospital as well as Dr. Sudhir Gupta, HOD department of Forensic Medicine, AIIMS Delhi opined as follows: -

- (i) Cause of death in this case is head injury and its consequences caused by blunt force in course of assault/attack.
- (ii) The head injury is the immediate and direct cause of death which is sufficient to cause death in ordinary course of nature.
- (iii) There is no medical discrepancy between these opinions from forensic point of view.

We have gone through the statements of witnesses recorded under sections 161/164 Cr.P.C. Rama Prasad Samanta is the father of the deceased and the first informant. He received the information from Mohit Kr. Mondal who claimed to be an eye-witness. However, in his statement recorded under section 164 Cr.P.C, Rama Prasad Samanta has not named the opposite party as one of the assailants. Similarly, Debabrata Mondal in his statement recorded under section 164 Cr.P.C has also not named opposite party. Bappa Mistry, another witness under section 164 Cr.P.C also does not name the opposite party. However, name of the opposite party has transpired from the statements of Indrajit Kayal recorded under section 164 Cr.P.C and that of Mohit Mondal, Palan Chandra Mondal and Ranjita Bhandari under section 161 Cr.P.C. Hence, there is dichotomy in the statements of witnesses with regard to

involvement of opposite party in the crime. More importantly, when the statements of the aforesaid witnesses are read in conjunction with the medical opinion, it appears that there was commotion and miscreants had assaulted the victim with fists and blows. Admittedly, they had not used any weapon and death was the cumulative effect of injuries caused by all of them. There is nothing on record that the miscreants exhorted to kill the victim. These aspects have impact on the gravity of the offence and require to be borne in mind to determine whether the intention of the accused persons was to murder the deceased.

Opposite party-accused was arrested on 15.11.2021 and was in custody for more than 100 days when he was released on bail. Investigation of the case is complete. It cannot be said that Additional Sessions Judge had not adverted to the nature of the offence or other relevant parameters, namely, period of detention and necessity of further custodial detention for the purpose of investigation while granting bail.

It is nobody's case that opposite party-accused had misused his liberty or had intimidated witnesses. It has been contended pre-arrest bail of co-accuseds have been cancelled. Pre-arrest bail stands on a different footing from grant of bail. Hence, cancellation of pre-arrest bail of co-accused cannot ipso facto lead to cancellation of regular bail of opposite party. It must be borne in mind opposite party-accused was subjected to custodial interrogation and had been in custody for more than three months

prior to grant of regular bail. There is dichotomy in the statements of witnesses with regard to his participation in the crime.

Under these circumstances, release of opposite party-accused on bail does not call for interference though we are of the opinion strict condition may be imposed upon his movement so that his release on bail does not cast a shadow upon the witnesses in the case.

In the light of the aforesaid discussion, we dispose of the application by directing that the opposite party-accused while on bail, shall remain outside the district of South 24 Parganas and shall provide the address where he shall presently reside to the investigating agency as well as to the court below. He shall report to the officer in charge of the police station concerned within whose jurisdiction he shall reside while on bail once in a week until further orders. He shall appear before the Trial Court on every date of hearing and shall not tamper with evidence or intimidate witnesses in any manner whatsoever. In the event he fails to appear before the Trial Court, without any justifiable cause, the said Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

With these directions, CRM (DB) 1529 of 2022 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)