

**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 (A) 2686 of 2022

**Sk Abu Taher @ Sk Abu Taker
Mahammad Asfakur Rahaman
VS.
The Central Bureau
of Investigation & Anr.**

For the Petitioner : Mr. Kishore Datta, Id. Sr. Adv.
Mr. Rajaul Alam, Advocates

For the CBI : Mr. Dhiraj Trivedi, Id. ASG
Mr. Samrat Goswami, Advocates

Heard & Judgment on : **July 6, 2022**

DEBANGSU BASAK, J.:-

1. Petitioner seeks anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with CBI re-registered F.I.R. vide RC0562021S0032 dated 30.08.2021 at

CBI SCB Kolkata Kolkata under Sections 147 /148 /149 /323 /325 & 302 of the Indian Penal Code which was earlier under investigation by the Nandigram Police Station vide their F.I.R No. 224/2021 dated 13.05.2021.

2. Learned senior advocate appearing for the petitioner submits that the petitioner was falsely implicated. He refers to the averments made in paragraph 5 of the application for anticipatory bail. He submits that the petitioner subscribed to a particular political ideology. It is for reason of his political ideology that the petitioner is being wrongfully proceeded against. He contends that the leader of opposition makes a statement in the public domain with regard to the persons that the Central Bureau of Investigation (CBI) is likely to arrest. Thereafter, the CBI springs into action. In the present case, he submits, that another co-accused Sk. Supiyan approached this Hon'ble Court with a prayer for anticipatory bail which was rejected. He refers to the Hon'ble Supreme Court granting anticipatory bail to Sk. Supiyan. He draws the attention of the Court to the portions of the order of the

Hon'ble Supreme Court with regard to Sk. Supiyan and submits that, the petitioner is similarly placed and circumstanced as that of Sk. Supiyan. The petitioner should also be enlarged on anticipatory bail.

3. Learned senior advocate appearing for the petitioner submits that the incident occurred on May 3, 2021. The victim died on May 13, 2021. The CBI took over investigations on August 30, 2021 pursuant to order of the Hon'ble High Court. CBI filed the first charge sheet on October 5, 2021 where the petitioner was not named as an accused. Second charge sheet was submitted by CBI on January 6, 2022. Again, the petitioner was not named therein. Immediately thereafter, on January 9, 2022, the petitioner received a notice under Section 41A of the Criminal Procedure Code. The petitioner thereafter, received two notices under Section 160 of the Criminal Procedure Code on November 16, 2021 and June 30, 2022.

4. Learned Assistant Solicitor General refers to the materials in the case diary. He submits that the name of the petitioner

transpires from the statements recorded under Section 161 of the Criminal Procedure Code. Thereafter, two of the witnesses volunteered and recorded statements under Section 164 of the Criminal Procedure on January 24, 2022. Such two witnesses are Ashish Das and Biswajit Panda. Those two witnesses implicate the petitioner along with other accused persons. Based on such statements recorded under Section 164 of the Criminal Procedure Code, CBI tried to interrogate the petitioner. According to him, since a notice under Section 41A of the Criminal Procedure Code cannot be issued in respect of a heinous crime in view of the judgement of the co-ordinate Bench rendered in **CRM 5927 of 2019 dated August 5, 2019 [Manoj Shaw @ Manoj Kumar Shaw vs. The State of West Bengal]**, notices under Section 160 of the Criminal Procedure Code were issued to the petitioner. In response to that, the petitioner informed the CBI that the petitioner will not be able to attend the Investigating Officer. Finally, the petitioner wanted to talk to the Investigating Officer and/or participate in investigation over the mobile phone. He submits that the

custodial interrogation of the petitioner is required in order to ascertain his involvement in the incident. According to him, there is no bar in the CBI submitting a supplementary charge sheet.

5. Learned Assistant Solicitor General contends that Sk. Supiyan stands on a different footing than that of the petitioner in the instant case. CBI did not file a charge sheet naming Sk. Supiyan therein despite his name transpiring in the Section 164 statements. In the facts of the present case, the name of the petitioner transpires from the statements recorded under Section 164 of the Criminal Procedure Code which are subsequent to the filing of the second charge sheet. In the case of Sk. Supiyan, the name of Sk. Supiyan transpired prior to the filing of the second charge sheet. Learned Assistant Solicitor General submits, on instructions of the Investigating Officer who is present in Court, that, despite the best efforts of the CBI in order to apprehend the petitioner, the petitioner was not found at his place. The petitioner is not cooperating with the investigations.

6. The contention of learned Assistant Solicitor General that the petitioner is not cooperating with the investigation or that the petitioner was not found at his residence by the Investigating Agency, is disputed on behalf of the petitioner.

7. The police case relates to an incident happening on May 3, 2021. Death of the victim occurred on May 13, 2021. The incident relates to post poll violence. The Hon'ble High Court required the CBI to investigate police cases relating to post poll violence. The incident of May 3, 2021 resulting in the death of the victim was being investigated by the State police. Subsequent to the order of the Hon'ble High Court, CBI took over the investigations and registered a First Information Report on August 30, 2021.

8. On October 5, 2021, CBI submitted the first charge sheet. The petitioner is not named in the first charge sheet.

9. On January 6, 2022, the CBI submitted a second charge sheet. Again, the petitioner is not named therein.

10. The petitioner was served with a notice under Section 41A of the Criminal Procedure Code on January 9, 2022.

11. Manoj Shaw @ Manoj Kumar Shaw (supra) is of the view that, recourse to Section 41A of the Criminal Procedure Code is wholly prohibited in case of offences involving punishment in excess of 7 years.

12. Two persons claiming to be witnesses namely, Ashish Das and Biswajit Panda volunteered and recorded statements under Section 164 of the Criminal Procedure on January 24, 2022.

13. We perused the statements of Ashish Das and Biswajit Panda recorded under Section 164 of the Criminal Procedure Code, on January 24, 2022. Such statements, squarely implicates the petitioner.

14. While implicating the petitioner in the offences by the statements recorded under Section 164 of the Criminal Procedure Code, such persons, also names Sk. Supiyan therein. Sk. Supiyan, was granted anticipatory bail by the Hon'ble Supreme Court on February 9, 2022.

15. The Hon'ble Supreme Court considered the prayer for anticipatory bail of Sk. Supiyan in SLP (Cri.) No. 9796 of 2021

(Sk. Supiyan @ Suffiyan @ Supisan vs. The Central Bureau of Investigation), the Hon'ble Supreme Court observed that the statements of Ashish Das and Biswajit Panda were recorded belatedly on January 24, 2022. Such observatim by the Hon'ble Supreme Court that, with regard to the statements of Ashish Das and Biswajit Panda is to be understood in the context of Sk. Supiyan's prayer for anticipatory bail. Sk. Supiyan was not named in the two charge sheets filed by the CBI. Name of Sk. Supiyan transpired in statements of five other witnesses which were recorded prior to the filing of the second charge sheet on January 6, 2022. The statements of Ashish Das and Biswajit Panda recorded under Section 164 of the Criminal Procedure Code were recorded on January 24, 2022 which subsequent to the filing of the second charge sheet on January 6, 2022. In such context that the Hon'ble Supreme Court observed that, the two statements of Ashish Das and Biswajit Panda were belated in relation to the second charge sheet not naming Sk. Supiyan being filed on January 6, 2022.

16. In the present case, there is no charge sheet as against the petitioner presently. The name of the petitioner transpires from the statements of Ashish Das and Biswajit Panda recorded on January 24, 2022. Such statements were recorded subsequent to the filing of the second charge sheet on January 6, 2022.

17. The records do not disclose that there is any statement recorded under Section 164 of the Criminal Procedure Code implicating the petitioner prior to the filing of the second charge sheet.

18. The investigations are yet to be concluded.

19. In the circumstances, considering the involvement of the petitioner as transpiring from the statements of the two witnesses recorded under Section 164 of the Criminal Procedure Code on January 24, 2022 which is subsequent to the filing of the second charge sheet dated January 6, 2022, and the gravity of the offences we deem it appropriate not to grant anticipatory bail to the petitioner.

20. Prayer for anticipatory bail of the petitioner is **rejected**.

21. CRM (A) 2686 of 2022 is, accordingly, **dismissed**.

(Debangsu Basak,J.)

22. I agree.

(Bibhas Ranjan De, J.)