

24.06.2022
Sl. No.21
akd
[Rejected]

C. R. M. (DB) 1909 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 10.06.2022 in connection with Panskura Police Station Case No. 495 of 2019 dated 08.10.2019 under Sections 302/120B of the Indian Penal Code read with Sections 25/27 of the Arms Act.

And

In Re: ***Nabarun Mishra***

... .. Petitioner

Mr. Ayan Basu
Mr. Sourav Bera
Mr. Sumit Routh

... .. for the petitioner

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee

... .. for brother of the victim

Mr. Swapan Banerjee
Mr. Suman De

... .. for the State

It is submitted on behalf of the petitioner that prosecution of the case has been stayed by the Apex Court. It is further submitted there is no possibility of the trial concluding in near future. It is also submitted petitioner is not the principal accused. Hence, he may be enlarged on bail.

Learned advocate appearing for the State produces the case records.

Learned advocate appearing for the brother of the victim opposes the prayer for bail and submits petitioner is an associate of one Sk. Md. Anisur Rahaman. Anisur and others hatched a conspiracy to murder the victim. Pursuant to such conspiracy, the victim was murdered.

In course of trial, the de-facto complainant viz. Jahar Sha (PW1) was examined. His deposition narrates the brutal murder and the complicity of Md. Anisur Rahaman as well as the petitioner as conspirators.

Without considering the aforesaid material, State of West Bengal took a decision to withdraw the prosecution under Section 321 of the Code of Criminal Procedure. The matter was challenged before this court in WPA 6315 of 2021. During the pendency of the writ proceeding, in posthaste, order of acquittal was passed. Subsequently, the order of acquittal was stayed by a learned single Judge of this court. Due to the influence of the accused persons, Jahar Sha, de-facto complainant of the case, withdrew from the writ proceeding and his client substituted himself in his place.

At this juncture, State of West Bengal continued with a farcical prosecution where most witnesses turned hostile. This prompted his client to approach the Apex Court for transfer of the prosecution to a different State. Apex Court has entertained the plea. There is every possibility petitioner will tamper with witnesses and take every steps to derail the prosecution, if released on bail. Prayer for bail of co-accused viz. Sk. Md. Anisur Rahaman was turned down by this court in CRM (DB) 1472 of 2022.

While dealing with the said bail application, this Court had noted the aforesaid facts canvassed by Mr. Rajdeep Majumder and observed as follows :-

“These circumstances give rise to a serious apprehension in the mind of this Court as to the overwhelming and malevolent influence on the witnesses as well as the informant which had prompted them from either withdrawing from the writ petition or resiling from their earlier statements before police during deposition in Court.”

This Court also considered the submission regarding breach of fundamental right to speedy trial of the accused in the peculiar facts of the present case.

The Court observed as follows :-

“We have also given anxious thought to the contention of Mr. Bandyopadhyaya that detention of the petitioner at this stage when the prosecution is stayed by the Hon'ble Apex Court is in breach of his fundamental right under Article 21 of the Constitution of India. A fair prosecution requires to address not only the rights of the accused but also the rights of the victims in particular and the public confidence in criminal justice administration in general. Manner in which the prosecution is sought to be jettisoned gives rise to grave doubt with regard to the *bona fides* of the State in effectively prosecuting the petitioner and the other accused persons. As noted above, while on one hand the State chooses to support its stance of withdrawal of prosecution, on other hand it appears to be conducting a 'lip-service' trial wherein most witnesses have turned hostile.

An aura of fear and apprehension seems to pervade the minds of the witnesses and the relations of the victim. In fact, Jahar Sha (informant in the case) was constrained to withdraw himself from the writ proceeding challenging the withdrawal of prosecution. This calls for a balancing act between rights of the victim i.e., access to justice and witness protection and the right of the petitioner-accused under Article 21 of the Constitution of India.

In view of the painful state of affairs where the bias of the State is heavily loaded in favour of the petitioner-accused, it would be prudent for us to tilt in favour of protection of the witnesses and family members of the deceased and ensure a fair and just prosecution. Hence, we are not inclined to release the petitioner on bail.”

The observations in ***Sk. Md. Anisur Rahaman (supra)***¹ applies with full force to the present case. Petitioner is an associate of said Md. Anisur Rahaman. His release on bail would have similar malevolent impact on witnesses as well as circumstances relating to the present prosecution which has been derailed by the pre-varicating stance of the State.

On merits also we note evidence has come on record to show close nexus between the petitioner and Md. Anisur Rahaman. Petitioner along with other accused persons had also threatened the victim prior to his death. Hence, *prima facie* we are satisfied it is not a case of false implication owing to political rivalry.

¹ CRM (DB) 1472 of 2022 Order dated 10.06.2022

For these reasons, we are not inclined to grant bail to the petitioner at this stage.

The application for bail is thus **rejected**.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)