

08.09.2022
tkm/ct 28
sl no. 43

C.R.M.(DB) 1982 of 2022

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

In Re : Parbati Debnath petitioner

Mr. Arindam Jana
Mr. Bikram Banerjee
Mr. S Dasgupta
Mr. Arka Nandi
Mr. S Nayek

..... For the petitioner

Mr. R D Nandy
Ms. Sonali Das

..... For the State

Mr. Sanat Kr. Das
Mr. Sujan Chatterjee

..... For the OP nos. 2 & 3

Mr. Jana prays for cancellation of bail granted to opposite party nos. 2 and 3. He contends bail was obtained by suppression of the fact that offence under section 307 IPC was arrayed in the FIR. He drew attention of this court to order dated 3.3.2022 in WPA 1980 of 2022 wherefrom it appears that the offence punishable under section 307 IPC was arrayed in the FIR of the instant case.

Learned counsel for opposite party nos. 2 and 3 submits FIR was registered under section 448/427/323/325/506/34 IPC and there is no suppression in the matter at the time of consideration of bail. He further submits in conclusion of investigation, charge sheet has been filed alleging bailable offences.

In view of the aforesaid submission and as it is noted in the order dated 3.3.2022 in WPA 1980 of 2022, Burdwan P.S case no. 1482 of 2021 was registered, inter alia, under section 307 IPC, this court called upon the Inspector-in-Charge to file an affidavit in the matter. Pursuant to the direction, affidavit is placed on record.

Affidavit contains the following averments :-

It is averred though endorsement in the written complaint records offences under section 448/427/323/325/307/506/34 IPC, in the formal FIR section 307 was omitted by the recording officer, S.I Tapan Karfa.

Explanation was sought from SI Tapan Karfa with regard to such omission. He stated this was an inadvertent omission. His explanation has not been accepted and the matter has been referred to superior police authority for initiating departmental enquiry against him.

With regard to report submitted before this court in WPA 1980 of 2022 disclosing offence under section 307 IPC in the present case, it is contended that relevant case number and offences were copied from the data base of the computer in the police station. As a result, inadvertent error took place.

It has been further averred police report has been filed under sections 341/323/506/34 IPC.

Having gone through the aforesaid averments, we note omission of offence under section 307 IPC in the formal part of the FIR is a striking incongruity. While endorsement in the written complaint discloses the graver offence, the same is omitted in the

formal part of the FIR. S.I Tapan Karfa who drew up the FIR contended it was an inadvertent error. We are unable to accept such contention. Accordingly we direct the Superintendent of Police Purba Bardhaman to initiate departmental proceeding against the said police officer for dereliction of duty.

Nonetheless, it is undeniable the FIR had been registered under sections 341/323/325/427/506//34 IPC. Opposite party nos. 2 and 3 appeared before the court below and prayed for bail with reference to the aforesaid offences. In this backdrop it cannot be said that the opposite party nos. 2 and 3 had made misstatement before the court below at the time of consideration of their bail prayer. Moreover, the instant case has resulted in filing of a police report under bailable offences.

We have gone through material on record including the injury report. There is no injury on the neck of the petitioner which would support the accusation of throttling.

In view of the aforesaid circumstances, we chose not to cancel the bail of opposite part nos. 2 and 3. However, to instill confidence in the mind of the petitioner, we direct the Inspector-in-Charge, Bardhaman District to strictly comply with the directions in the order dated passed in WPA 1980 of 2022.

With these observations, CRM (DB) 1982 of 2022 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)