

12.08.2022.
14 & 15.
Ct.No.28
as/PA

C.R.R. 2049 of 2022
in
C.R.M. (DB) 1412 of 2022
with
C.R.R. 2430 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure.

In the matter of : Courts on its own motion.

... Petitioner.

Mr. Amitabha Karmakar,
Mr. Arup Kr. Bhowmick.

...for the Petitioner in
CRM (DB) 1412 of 2022.

Mr. Sourav Chatterjee,
Mr. D. Banerjee.

...for the Opp. Parties.

Mr. Saibal Bapuli, Id. A.P.P.,
Mr. Soumik Ganguli,
Mr. Bibaswan Bhattacharyya.

...for the State.

In RE: CRR 2430 of 2022

During the hearing of the bail application being CRM (DB) 1412 of 2022, it came to the notice of this Court by order dated 17.03.2022, learned Sessions Judge has released the respondent/accused Sanaul Sk. on bail. While doing so, the judge failed to consider the gravity of the offence and the overwhelming evidence against the said respondent/accused. He was also oblivious of the fact that bail prayer of co-accuseds viz., Rijaul Sk. @ Riyul Sk., Sikim Sk., Samsul Hoque and Piarul Sk. had been repeatedly turned down by this Court in CRM 611 of 2021, CRM 3777 of 2021 and CRM 6336 of 2021 on 1.3.2021, 3.8.2021 and 10.12.2021 respectively. Hence,

this Court was inclined to issue a suo motu Rule upon the respondent/accused Sanaul Sk. calling upon him to show cause why his bail be not cancelled.

Pursuant to the Rule, an affidavit has been filed by the said respondent/accused.

In the affidavit the respondent/accused has stated that his stands on a better footing than the co-accuseds whose bail prayers were rejected by this Court and there is no adverse report against him.

Learned Public Prosecutor supports the Rule and produces the Case Diary. He contends statements of the eyewitnesses show respondent/accused along with others had come in a body and had dragged the victim from his residence. They threatened his wife and family members. Thereafter, on the next day, the dead body of the victim was recovered. Post mortem report reveals large number of injuries on the body of the victim corroborating the version of the eye witnesses.

We have considered the materials on record. We have also seen the statements of witnesses viz., Afjal Hossain (brother of the deceased) and Ulfatan Bibi (wife of the deceased). Both of them unequivocally stated the respondent/accused along with others came to the spot and dragged away the victim. One of them brandished pistol at his wife. Subsequently, they contacted the police and when police came to the spot, the miscreants ran away. One of them viz., Rijaul Sk. was apprehended with a hansua. On the next day dead body of the deceased was recovered.

Perusal of the order of bail shows gross non-application of mind to the aforesaid statements of the family members of the deceased recorded under Section 164 of the Code of Criminal Procedure disclosing the role of the respondent accused along with others in dragging away the victim from his residence. Thereafter, on the next day, his dead body with multiple injuries was found in a field. Court below appears to have completely glossed over the gravity of the offence and the aforesaid incriminating materials collected in course of investigation disclosing the role of the respondent/accused in the crime. It merely referred to the fact the respondent/accused had been arrested in another case and there is no necessity for detention as charge sheet has been filed.

Principles governing grant of bail in serious offences is not hinged merely on the issue whether detention is necessary for purposes of investigation. Gravity of the offence, materials collected in support of the role played by the accused in the crime are relevant and equally weighty considerations for the court. The court below has completely failed to address itself on such issues. The order granting bail suffered from patent perversity requires to be set aside on this score alone. That apart, the order appears to have been passed without considering the fact that bail prayer of co-accuseds viz. Rijaul Sk. @ Riyul Sk., Sikim Sk., Samsul Hoque and Piarul Sk. were rejected by this Court in CRM 611 of 2021, CRM 3777 of 2021 and CRM 6336 of 2021 dated 1.3.2021, 3.8.2021 and 10.12.2021 respectively. Non-consideration of rejection of bail

prayer of co-accuseds in a particular case by a higher court is not only a failure to take into account relevant issue but an act of judicial indiscipline.

We do not express any further opinion on the matter as it is unclear whether the Public Prosecutor had brought the issue of rejection of bail of co-accuseds to the notice of the court below.

We are unable to accept the contention of Mr. Chatterjee that respondent/accused stands on better footing than those whose bail prayers were rejected by this Court. Statements of witnesses show active participation by the respondent accused in the crime who appears to stand on par with co-accuseds whose bail prayers were rejected. Fact that Rijaul Sk. was arrested with a handsua would not diminish the active role of the petitioner and other accused persons as narrated by the eyewitnesses. It is also relevant to note that respondent/accused was barely in custody for 12 days when the order of bail was passed.

For the aforesaid reasons, we are of the opinion that the order of bail was passed without considering relevant materials and suffers from gross perversity and is liable to be set aside.

Respondent/accused is directed to surrender before the jurisdictional Magistrate within seven days from date failing which the investigating/prosecuting agency shall be at liberty to apprehend him in accordance with law.

The Rule is made absolute.

In RE: CRR 2049 of 2022

During the hearing of the bail application being CRM (DB) 1412 of 2022 noticing the fact that the learned Sessions Judge by order dated 20th April, 2022 had released the respondent/accused Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. on bail, a suo-motu Rule was issued calling upon the said respondents/accuseds to show cause why the order granting bail be not set aside.

In response to the Rule, respondents/accuseds have filed their affidavits.

Learned Advocate for the State submits bail was granted to respondents/accuseds viz., Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. in view of the fact that Sanaul Sk. had been enlarged on bail. His bail has been cancelled by this Court. Hence, the bail granted to the respondents/accuseds viz., Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. be also cancelled.

We have considered the materials on record. Statements of witnesses viz., Afjal Hossain (brother of the deceased) and Ulfatan Bibi (wife of the deceased) recorded under Section 164 of the Code of Criminal Procedure show respondents/accuseds viz., Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. stand on the same footing with Sanaul Sk. Bail of Sanaul Sk. has been cancelled by this Court in CRR 2430 of 2022 for reasons recorded therein.

The present respondents/accuseds were enlarged on bail on the premise co-accused Sanaul Sk. has been granted bail. Bail of Sanaul Sk. being cancelled, we are of the opinion for the same reasons recorded in CRR 2430 of 2022 bail granted to Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. cannot survive. The impugned order dated 20.04.2022 granting bail to the aforesaid respondents/accused are accordingly cancelled.

Respondents/accuseds viz., Mojaffar Hossain @ Mojaffar Hossain @ Md. Mojffar Sk and Ujir Hossain @ Ujir Sk. are directed to surrender before the learned jurisdictional Magistrate within seven days from date failing which the investigating/prosecuting agency shall take necessary steps for their apprehension in accordance with law.

The Rule is made absolute.

Observations made herein are for the disposal of the aforesaid Rules and shall not have any bearing at the subsequent stage of the proceeding.

In RE: CRM (DB) 1412 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Baishnabnagar P.S. Case No.477 of 2020 dated 11.09.2020 under Sections 342/302/201/120B/34 of the Indian Penal Code.

In Re: Samsul Sk. @ Samsul Hoque...

....Petitioner.

We have considered the materials on record. Statements of witnesses viz., Afjal Hossain (brother of the deceased) and Ulfatan Bibi (wife of the deceased) recorded under Section 164 of the Code of Criminal Procedure prima facie show role of the

petitioner along with co-accuseds in dragging the victim from his residence who was subsequently found murdered in a nearby field on the next day. Post mortem report shows extensive injuries on the body of the deceased.

In view of the incriminating materials and gravity of the offence and as bail of the co-accuseds granted by the court below have been cancelled in CRR 2430 of 2022 and CRR 2049 of 2022, we find no reason to enlarge the petitioner on bail.

Accordingly, the prayer for bail of the petitioner is rejected.

(Ananya Bandyopadhyay,J.)

(Joymalya Bagchi, J.)