

C.R.M. 6522 of 2021

17.05.2022

Sl. 108
Court No.29
sourav
(Allowed)

In Re: - An application under Section 439(2) of the Code of Criminal Procedure, 1973.

And

In the matter of: **Gobinda Mandal**

....petitioner.

Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett

...for the petitioner.

Mr. Prasun Kumar Datta
Mr. Nirupam Dhali

...for the State.

Mr. Himanshu De, Sr. Adv
Mr. Musharraf Alam Sk.
Ms. Ayantika Roy
Mr. Rajeshwar Chakraborty
Mr. Srinjan Ghosh

...for the opposite party no. 2.

Petitioner seeks cancellation of the order granting bail by order no. 2 dated April 17, 2021 passed in Criminal Misc. Case No. 1384 of 2021.

Learned advocate appearing for the petitioner submits that this Hon'ble Court allowed an application for cancellation by the order dated February 28, 2022 passed in CRM 6519 of 2021. He submits that the cancellation order relates to the same police case.

Learned senior advocate appearing for the private opposite parties draws the attention of the Court to the affidavit verifying the petition. He submits that the petition was verified by an authorized agent of the petitioner. He refers to the second paragraph of the affidavit and submits that such person cannot claim that the contents of the paragraphs 1 to 16 of the petition are true to his knowledge.

This point, is not there in the affidavit-in-opposition.

The private opposite parties not taking such point in the affidavit-in-opposition, we are afraid, we are unable to allow the private opposite parties to rake up such issue at the time of hearing since it is a question of fact which the private opposite parties ought to raise in the affidavit-in-opposition for the petitioner to the answer in the reply. The private opposite parties no doing so at this stage, the same cannot be allowed to be raked up.

It is next contended on behalf of the private opposite parties that the learned Court perused the materials on record including the case diary and considering the period of detention of the private opposite parties proceeded to grant bail to the private opposite parties.

The issue of the period of detention along with materials in the case diary were discussed in the order dated February 28, 2022 passed in CRM 6519 of 2021. There, we are returned the following findings:

“The period of detention of the private opposite party on the date of April 17, 2021 when the bail was granted by the jurisdictional Court was 67 days. The Court considering a bail petition is required to take into consideration the gravity of the offence, the involvement of the accused therein, the period of detention, if there be any, the criminal antecedent of the person seeking the bail and the likelihood of the person seeking bail fleeing the trila, the possibility of the accused influencing the witnesses amongst other grounds. In the present case, the jurisdictional Court laid emphasis on the period of detention of the private opposite party only without taking into contemplation the other factors

relevant for the purpose of consideration of the prayer for grant of bail. The gravity of the offence and the involvement of the private opposite party were not taken into consideration by the jurisdictional Court while granting the prayer for bail. In the facts of the present case, one person was murdered with four being injured. The involvement of the private opposite party in the offences appears from the statements recorded under Section 164 of the eye-witnesses.”

It is next contended on behalf of the private opposite parties that the consideration for grant of bail and cancellation of bail are different.

No doubt, the considerations are different. One of the considerations for cancellation of the bail granted is that the learned Court granting the bail did not take into account the materials in the case diary, the involvement of the private opposite parties appearing therefrom while granting the order for bail. Moreover, the mere period of detention is not a sufficient ground for the cancellation of bail.

In the present case, the impugned order records only one ground for grant of bail that is the period of detention.

The impugned order does not discuss the finding of the learned judge with regard to the materials in the case diary although, the learned judge records in the order that he perused the case diary.

In such circumstances, considering the gravity of the offence and the involvement of the private opposite parties therein, we cancel the bail granted to the private opposite parties by the order dated February 28, 2022. We direct the private

opposite parties to surrender before the jurisdictional Court within seven days from date. In default, the jurisdictional Court will take appropriate steps against the private opposite parties.

Accordingly, the prayer for cancellation of bail is allowed.

CRM 6522 of 2021 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

