

IN THE HIGH COURT AT CALCUTTA
(Criminal Miscellaneous Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.M 7594 of 2021

Sk. Muktader Rahaman & Others

Vs

The State of West Bengal

The Central Bureau of Investigation

With

C.R.M 7669 of 2021

Sk. Baitul @ Sk. Baidul @ Sk. Baitul

Vs

The Central Bureau of Investigation

With

C.R.M 8058 of 2021

Sk. Emadul Islam

Vs

The State of West Bengal

The Central Bureau of Investigation

With

C.R.M 8159 of 2021

Sk. Najrul Islam

Vs

The State of West Bengal

The Central Bureau of Investigation

For the Petitioner :Mr. Kishore Datta, Sr. Adv.
 Mr. Achintya Banerjee
 Mr. Imteaz Ahmmmed
 Mr. Suman De
 Mr. Tarun Kumar Chatterjee
 Ms. Indumouli Banerjee
In C.R.M. no. 7594 of 2021

For the Petitioner :Mr. Sekhar Kr. Basu Sr. Adv.
 Mr. Biswajit Hazra
 Mr. Arif Mahammad Khan
 Mr. A. Sain,
In C.R.M. no. 7669 of 2021

For the Petitioner :Mr. Jayanta Narayan Chatterjee
 Mr. Sk. Rejaul Islam
 Ms. Nandini Chatterjee
 Mr. Supreem Naskar
 Ms. Jayashree Patra
 Ms. Sreeparna Ghosh
 Mr. Souvrodeep Koley
In C.R.M. no. 8058 of 2021 &
 C.R.M 8158 of 2021

For the CBI: Mr. Y.J. Dastoor, Ld. ASG
 Mr. Phiroze Edulji
 Mr. Amajit De,
 Mr. Samrat Goswami

For the State : Mr. Neguive Ahmed
 Ms. Amita Gaur

For The de facto Complainant : Mr. Kallol Mondal
 Mr. Rajdeep Mazumder
 Mr. Bilawadal Bhattacharya
 Mr. Srijib Chakraborty
In C.R.M. no. 7594 of 2021
 & C.R.M 7669 of 2021

Heard on : April 08, 2022
 Judgment on : April 21, 2022

Bibhas Ranjan De, J.:-

1. All four (4) applications in connection with aforesaid four C.R.M arising out of Nandigram Police Station Case (FIR) No. 224/2021 dated 13.05.2021 under Section 147 /148/ 149 /323 /325/ 302 of the Indian Penal Code (for short 'IPC'), are taken up together for decisions.
2. On 03.05.2021 at about 10.30 hours one Debabrata Maity, uncle of complainant, was severely injured and wounded due to sudden attack by unknown miscreants. The injured Debabrata Maity was taken to Nandigram Hospital wherefrom he was referred to Tamluk Sadar Hospital and lastly he was further referred to P.G Hospital Kolkata where said injured succumbed to his injuries on 13.05.2021 at about 11.30 a.m. hours. It was further alleged that miscreants indulged in violence with deadly weapons in the village Chillagram on 03.05.2021. On receipt of a complaint from one susanta Maity, nephew of said Debabrata Maity, Nandigram Police Station Case No. 224/2021 dated 13.05.2021 under Section 147 /148/ 149/323/325/ 302 was started.
3. During investigations of this case on 19.08.2021 a Special Bench of this Hon'ble Court passed an order in WPA No. 143 of 2021 handing

over a cluster of criminal cases including this case being no. Nandigram police Case No. 224/2021 dated 13.05.2021 under Section 147 /148/ 149 /323 /325/ 302 of the Indian Penal Code to the Central Bureau of Investigation (for short CBI).

4. In CRM **7594 of 2021** Ld. Senior Advocate, Mr. Kishore Dutta has highlighted the following circumstances in favour of granting bail to the petitioners :

4.1 Nothing incriminating materials was found against the petitioners before their arrest even after filing of preliminary charge sheet.

4.2 Nature of injury of the deceased did not support the case of the allegation of the investigation agency that miscreants attacked the Chillagram village armed with sharp cutting weapons like iron roads, swords, gun etc. creating a reasonable doubt in the allegation.

4.3 There is no explanation for delay in recording statement of witnesses particularly the statement of daughter of victim, wherein these petitioners were involved. Non explanation of delay of recording that statement culminates the possibility of

that statement of daughter of the victim being tutored by the investigating agency.

4.4 CBI filed an affidavit before the Hon'ble Supreme Court stating inter alia that Sk. Supiyan, another accused of this case, was mastermind of entire offence. But even considering the same Hon'ble Supreme Court granted pre-arrest bail to Sk. Supiyan.

4.5 No Test Identification (for short T.I) Parade was held on the ground that the petitioners were all co-villagers and nothing was seized from the possession of the petitioners.

5. In CRM **7669 of 2021** Ld. Senior Advocate Mr. Sekhar Kr. Basu has strenuously argued as follows:

5.1 Though name of the accused did not take place in the First Information Report of this case CBI send a notice to the petitioner who attended on 11.09.2021 but his attendance was not recorded by the CBI officials with an ulterior motive;

5.2 For the second time he appeared before the CBI officials on 09.10.2021 but he was arrested without assigning any reason and from then on he is in custody for a period of 178 days;

5.3 Name of the petitioner did not appear in preliminary charge sheet filed by the CBI on 05.10.2021, but on 06.01.2022 CBI

submitted supplementary charge sheet for the first time against these petitioners and others in connection with this case;

5.4 Two other co-accused of supplementary charge sheet, namely Sk. Fatenur @ Fate and Sk. Mijanur have been enlarged on interim bail by the Ld. Additional District and Sessions Judge, Haldia;

5.5 Sk. Supiyan, being mastermind of the entire offence of this case, according to CBI, was granted pre-arrest bail by the Hon'ble Supreme Court holding inter alia that though the name of Sk. Supiyan appeared in the statement of witnesses recorded on 18th November, 2021 but not cited as witness in the charge sheets and the statement of other two witnesses have been belatedly recorded on 24th January, 2002;

5.6 Petitioner is not involved in this case in any way and no recovery was made from his possession that is why further detention is absolutely unnecessary.

6. In C.R.M No. **8058 of 2021** and C.R.M no. **8159 of 2021**, Ld. Advocate Mr. Jayanta Narayan Chatterjee has contended that the petitioners are in custody for about 270 and 180 days respectively. Co-accused namely Sk. Mijanur and Sk. Fatenur have been enlarged on bail. It has been further submitted that even the name of the petitioners are not in the First

Information Report. It has been further argued that son of the victim named Sk. Attaur, Sk. Mustake and Sk. Hayatul who assaulted victim on his face duly corroborated by Post Mortem Report. That apart, it has been further argued that Sk. Supiyan has been granted pre-arrest bail by the Hon'ble Apex Court. Before parting with his argument it has been submitted that the petitioner namely Sk. Najrul Islam co-operated with investigation by attending before investigating agency on 07.10.2021 and on 09.10.2021 in reply to notice.

7. In reply, on behalf of the C.B.I, Ld. Additional Solicitor General Mr. Y.J. Dastoor has vehemently submitted that preliminary charge sheet was filed on 05.10.2021 against Sk. Mijanur Sk. Fatenur and Sk. Emadul Islam in view of statement of witnesses recorded under Section 161 Cr.P.C and documents seized during investigation. It has been further submitted that during further investigation eye witnesses recorded their statements under Section 161 Cr.P.C implicating all of the petitioners/accused involved in the alleged violence at the Chillagram village on 03.05.2021. With regard to accused Sk. Supiyan it has been submitted that the Hon'ble Apex Court granted pre-arrest bail to Sk. Supiyan mainly on the ground that his name did not appear in both the charge sheets.

8. On behalf of the defacto complainant, Ld. Advocate Mr. Kallol Mondal has appeared and strenuously contended all the petitioners were arrested for their direct involvement in the alleged offence on the basis of statements of witnesses recorded under Section 161 and 164 Cr.P.C. Mr. Mondal further submitted that all the petitioners were implicated in the supplementary charge sheet filed on 06.01.2022. Mr. Mondal further contended that accused Sk. Supiyan was granted pre-arrest bail by the Hon'ble Apex Court, as he stands on the different footings as that of the petitioners in connection with all four C.R.M. Hon'ble Apex Court granted bail as his name did not appear in both the charge sheets and that apart, statements of witnesses did not implicate him with regard to any overt act attributed to him thereby.

Mr. Dastoor, in support of his contention, relied on a case, reported in (2018) 10 SCC 516 (State of Orissa Vs. Mahima nanda Mishra) and (2018) 12 SCC 129 (Anil Kr. Yadav Vs. State NCT of Delhi & Anr).

Decision

9. Anil Kumar Yadav (supra) has delineated the parameters for grant of bail. Mahima nanda Mishra (supra) has relied upon Anil Kumar Yadav (supra). At the very outset, it will be useful to refer to the precedents to govern the grant of bail, without attributing an exhaustive character to them. The considerations are as follows:

9.1. Where granting bail, the Court has to keep in mind, not only the nature of accusations, but the severity of punishment of the accusation entails a conviction, and the nature of evidence, in support of the accusations.

9.2. Reasonable apprehensions of the witnesses, being tampered with, or the apprehension of their being a threat for the complainant should also weigh with the Court, in the matter of grant of bail.

9.3. While it is not expected to have the entire evidence, establishing the guilt of the accused, beyond reasonable doubt, but there ought always to be a prima facie satisfaction of the Court, in support of the charge.

9.4. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events the accused is entitled to an order of bail.

9.5. Grant of bail, though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not at a matter of course. Order for bail bereft of any cogent reason, cannot be sustained.

10. It is well settled that, among other circumstances, the factor to be borne in mind, while considering an application for bail are:

10.1. Whether there is any prima facie or any reasonable ground to believe, that the accused had committed the offence;

10.2. Nature and gravity of the accusation;

10.3. Severity of the punishment, in the event of conviction;

10.4. Danger of the accused absconding or fleeing, if released on bail;

10.5. Character, behaviour, means, position and standing of the accused;

10.6. Likelihood of the offence, being repeated;

10.7. Reasonable apprehensions of the witnesses, being influenced; and

10.8. Danger, of course, of justice being thwarted by grant of bail.

11. In terms of argument, advanced on behalf of the petitioners in all four C.R.M, it would be appropriate to recapitulate the solemn order of the Hon'ble Apex Court, in respect of accused, Sk. Supiyan @ Suffiyan @ supisan, whereby, accused was granted pre-arrest bail. Before the Hon'ble Court, CBI, relied on statements of five witnesses recorded under Section 164 of Cr.P.C. Hon'ble Apex Court clarified, that among the five witnesses, two were examined on 07.09.2021 and 11.09.2021, respectively. But the name of the accused Sk. Supiyan did not appear in the charge sheet filed on 05.10.2021, by the C.B.I. Hon'ble Apex Court, further observed, that one of the remaining three witnesses, has not been named in the list of the charge sheeted witness, and remaining two witnesses were examined belatedly on

24.01.2022. On those aforesaid cogent grounds, Hon'ble Apex Court could not refuse the prayer for the pre-arrest bail.

12. In terms of argument advanced on behalf of the petitioners in all four C.R.M, it is claimed that all the petitioners were falsely implicated in this case for the offence alleged to have been committed on 03.05.2021 by the involvement of a mob consisting of 100/150 persons. Petitioners seem to have claimed parity with regard to the pre-arrest bail extended in favour of the accused Sk. Supiyan by the Hon'ble Apex Court.

13. With regard to the claim of parity we find that C.B.I only focused on five statements of witness recorded under Section 161 Cr.P.C before the Hon'ble Apex Court in Criminal Appeal No. 198 of 2022/ SLP (Case) No. 9796 of 2021 in respect of accused Sk. Supiyan. Hon'ble Apex Court discarded all those five statements of witnesses recorded under Section 164 Cr.P.C on the ground that though out of five witnesses two statements were recorded on 07.09.2021 and 11.09.2021 prior to filing of preliminary charge sheet but accused Sk. Supiyan was not named in both the charge sheets filed on 05.10.2021 and 06.01.2022. That apart, out of remaining three witnesses one was recorded on 18.11.2021, but his name did not find place even in the supplementary charge sheet. And remaining two witnesses were belatedly recorded on 24.01.2022 i.e. after filing of supplementary charge sheet.

14. Even if we exclude statement of those five witnesses recorded under Section 164 Cr.P.C relied upon by the C.B.I before the Hon'ble Supreme Court, we find, that the prosecuting agency got recorded other 21 statements of witnesses including five (5) witnesses recorded under Section 164 Cr.P.C prior to filing preliminary charge sheet on 05.10.2021 and also got recorded statements of six witnesses under Section 161 Cr.P.C. prior to submitting supplementary charge sheet. All those 27 witnesses squarely implicate all the petitioners seeking bail under Section 439 Cr.P.C in all four C.R.M in our hand.

15. Thus, we conclude by formulating our findings :

15.1. Offence alleged in this case is heinous one;

15.2. Petitioners are not on the same footing as that of accused Sk. Supiyan who was granted pre-arrest bail by the Hon'ble Supreme Court;

15.3. Even excluding statement of five (5) witnesses recorded under section 164 Cr.P.C discarded by the Hon'ble Supreme Court we find prima facie involvement of all the petitioners by the statement of 27 witnesses recorded before filing of supplementary charge sheet;

15.4. All the petitioners are named either in preliminary charge sheet or in supplementary charge sheet;

15.5 Likely hood of tampering of evidence, in case of granting bail, cannot be ruled out;

16. What emerges from the above that we are unable to exercise the power of granting bail under Section 439 of Cr.P.C. Thus, prayer for seeking bail under Section 439 Cr.P.C in all four C.R.Ms stand considered and rejected.

17. For the foregoing reasons and discussions, C.R.M No. 7594 of 2021, C.R.M No. 7669 of 2021, C.R.M No. 8058 of 2021 and C.R.M No. 8159 of 2021 stand disposed of.

[BIBHAS RANJAN DE, J.]

18. I Agree.

[DEBANGSU BASAK, J.]