

CRM (DB) 2798 of 2022

In re : An Application under Section 439(2) of the Code of Criminal Procedure.

-And-

In the matter of : **Sharadindu Patra**

... .. Petitioner

Mr. Pawan Kr. Gupta, Advocate

Ms. Sofia Nesar, Advocate

Mr. Santanu Sett, Advocate

... .. For the Petitioner

Mr. Joydeep Roy, Advocate

Ms. Sujata Das, Advocate

... ..For the State

Mr. Tarunjyoti Tewary, Advocate

... .. For the opposite party no. 2

The petitioner seeks cancellation of anticipatory bail granted to the private opposite party by the order dated May 10, 2022 passed by the learned Sessions Judge, Howrah in Criminal Misc. Case No. 1070 of 2022.

Learned Advocate appearing for the petitioner submits that the petitioner is involved in the police case investigated inter alia under Section 195A of the Indian Penal Code, 1860.

On the fateful day, the petitioner went to Howrah Court premises pursuant to the summons received by the petitioner to depose in one of the cases against the private opposite party with the another person there at. He refers to the order dated April 8, 2022 passed in CRM (DB) 592 of 2022 with regard to the other co-accused. He submits that, anticipatory bail granted to such co-accused was cancelled by the order dated April 8, 2022.

The factum of cancellation of such anticipatory bail was not draws to the attention of the Court granting anticipatory bail to the private opposite party on April 10, 2022. He submits that the impugned order is preverse, non-speaking and did not take into consideration the material facts. The fact that the petitioner was assaulted in the Court premises when the petitioner went to depose was not taken into consideration by the learned Judge granting anticipatory bail to the private opposite party.

Consequently, he seeks cancellation of such order granting anticipatory bail.

State and the private opposite party are represented.

Learned Advocate appearing for the State draws the attention to the statement of the petitioner recorded under Section 161 of the Code of Criminal Procedure. He submits that the petitioner named the private opposite party along with other persons as the assailants.

Learned Advocate appearing for the private opposite party draws the attention of the Court to the materials in the petition for cancellation as also in the affidavit-in-opposition. He submits that the petitioner claims himself to be an Advocate. He refers to the materials that he obtained from the e-Court website. He submits that, in response to a query in the Right to Information Act, the Bar Council of West Bengal by a writing dated September 19, 2022 stated that the petitioner was enrolled as an Advocate on January 27, 2022. He submits that the petitioner acted as an Advocate much prior thereto.

Learned Advocate appearing for the private opposite party refers to the complaint lodged by the petitioner. He submits that there also, the petitioner claimed himself to be an Advocate on the date when the petitioner was not entitled to so claim.

Learned Advocate appearing for the private opposite party submits that the private opposite party was engaged as cook and was not present at the locale when the incident occurred. In respect of such contention, he refers by a writing dated January 24, 2022, issued by the Pradhan.

Learned Advocate appearing for the private opposite party submits that there was not allegations of post-bail misconduct at the behest of the petitioner.

So far as the claim that the petitioner was an Advocate enrolled from January 27, 2022 and the claim that the petitioner represented himself as an Advocate prior thereto, it would be open to the private opposite party, if he is entitled to law, to take appropriate steps against the petitioner on such aspect. Such claim is of no consequence in the facts of the present case.

We are considering an application for cancellation of anticipatory bail. The private opposite party was enlarged on anticipatory bail by an order dated May 10, 2022. The private opposite party is a co-accused in the police case in which the prayer for anticipatory bail of the other co-accused was cancelled on April 8, 2022.

The factum of cancellation of anticipatory bail of the other co-accused dated April 8, 2022 passed by the High Court, was not brought to the attention of the learned Judge passing the impugned order of granting anticipatory bail to the private opposite party. The impugned order says that, considering the facts of the case, the materials on record and the case diary, nature of offence alleged and also considering the fact that charge-sheet in the present case submitted, the Court granted anticipatory bail. The Court did not take into consideration that the incident was alleged to occur at the Court premises where the petitioner came as a witness to depose in a Court proceeding. Such fact is a material consideration for the purpose of granting anticipatory bail to the private opposite party.

In the order dated April 8, 2022 passed in CRM (DB) 592 of 2022 by the Coordinate Bench refers to the fact that the petitioner was assaulted at the Court premises when the petitioner entered the Court premises to depose as a witness. The alibi set up by the private opposite party, appears to be specious. Eye witnesses statements recorded under Section 161 of the Code of Criminal Procedure implicates the petitioner and specifically state that the private opposite party was one of the assailants of the petitioner inside the Court premises.

The contents of the certificate of the Pradhan with deepest of respect, is hearsay. He does not claim that he was physically present in the marriage ceremony and that he saw private opposite party to be present in the marriage ceremony at the time when the incident occurred in the Howrah Court premises. Therefore, the writing of the Pradhan dated September 19, 2022 cannot be construed to be set up a valid alibi for the private opposite party.

There are criminal antecedents so far as the private opposite party is concerned. This fact was also not taking into consideration by the Sessions Court while considering the prayer for anticipatory bail.

A Special Leave Petition was sought to be preferred against the order dated April 8, 2022 passed by the Coordinate Bench being Special Leave Petition (Criminal) Diary No. 19310 of 2022. By an order dated October 18, 2022 the Hon'ble Supreme Court granted last chance of four weeks for the petitioner in the Special Leave Petition to cure the defects failing which the case was directed to be stands dismissed without any further reference to the Court. The Court is informed that the defects were not cured and, therefore, the Special Leave Petition was dismissed.

Consequently, the order granting anticipatory bail dated May 10, 2022 passed in Criminal Misc. Case No. 1070 of 2022 is cancelled.

All consequential steps upon such order are also cancelled.

The private opposite party will surrender before the jurisdictional Court within seven days from date.

CRM (DB) 2798 of 2022 is, thus, disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)