

14.12.2022.
30.
Ct.No.28
as

C.R.M.(DB) 3017 of 2022

In Re: An application for cancellation of bail under Section 439(2) read with Section 482 of the Code of Criminal Procedure.

In the matter of : The Central Bureau of Investigation.
... Petitioner.

Mr. Kallol Mondal.
...for the Petitioner/CBI.

Mr. Somnath Banerjee,
Mr. Pronojit Roy.
...for the OP.

Mr. Kallol Mondal, learned Advocate for the CBI submits bail was granted to opposite party without notice to CBI. Case Diary and other materials collected during investigation by CBI were not produced before the Court.

Learned Advocate for the opposite party submits case diary was produced by the Public Prosecutor before the learned Sessions Judge. Upon considering the contents of the case diary and as investigation is complete, learned Judge was pleased to enlarge the opposite party on bail.

The case was initially investigated by State police. Thereafter on 27th August, 2021 investigation was transferred to CBI. Bail prayer of the petitioner was rejected earlier on 6th September, 2021. A subsequent bail application was filed. No notice was given to CBI. Upon hearing the Public Prosecutor of the State, bail was granted. Once investigation is handed over to CBI, it was incumbent

on the opposite party to issue notice upon CBI and its Public Prosecutor. This was not done. Behind the back of CBI, bail order came to be passed.

It is noted in the impugned order, learned Judge considered the case diary. We are at a loss to understand when investigation stood transferred to CBI, how case diary and materials collected during investigation by the Central Agency could be in the possession of the Public Prosecutor of the State and produced before the court below.

Accordingly, we constrained to observe order granting bail is a perverse one. Moreover, in a grave offence involving murder, mere conclusion of investigation and submission of charge sheet may not be the sole determining factor to grant bail.

Under such circumstances, we cancel the bail granted to the opposite party. He is directed to appear before the trial court within seven days and pray for bail. In the event he does so, bail application shall be considered independently and in accordance with law after giving notice to CBI. If he fails to appear as aforesaid, the investigating agency as well as court below shall issue appropriate processes for his apprehension in accordance with law.

The application is accordingly disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

