

13.07.2022
cm/ct 28
sl no. 54 to 57

C.R.M. 2100 of 2019

+

C.R.M. 2103 of 2019

+

C.R.M. 10942 of 2019

And

In Re : An application for cancellation of bail under section 439 (2) of the read with Section 482 of the Code of Criminal Procedure, 1973.

In Re : Kutubuddin Laskar.

..... Petitioner.

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chattopadhyay,
Mr. Santanu Majhi,
Ms. Snigdha Saha
Ms. Trisha Rakshit.

... for the petitioner.

Mr. Satyajit Mandal,
Mr. Suranjan Mandal,
Mr. Souvik Naskar

...for the O.P.No.2 in
CRM 2100 of 2019.

Mr. Abdul Hamid Molla,
Mr. J. K. Chowrasia,
Sk. Halim.

...for the O.P.No.2 in
CRM 2103/2019 & CRM 10942 of 2019.

Mr. Partha Pratim Das,
Mrs. Manasi Roy.

... for the State in
CRM 2100/2019 & CRM 10942/2019.

Mr. Partha Pratim Das,
Mrs. Debjani Sahu.

... for the State in
CRM 2103/2019.

In these applications, petitioner who is the de-facto complainant has assailed orders granting bail being order No. 03 dated 10.12.2018 in Criminal Misc. Case No. 431 of 2018 and

order No. 04 dated 10.12.2018 in Criminal Miscellaneous No. 417 of 2018 in favour of Atiar Rahaman Laskar and Ikbāl Rasid Sardar @ Rojab respectively and order No. 03 dated 23.09.2019 in favour of Kahar Ali Laskar in connection with Usthi P.S. Case No. 434 of 2018 corresponding S.C. No. 198 of 2019 under Section 302/34 of the Indian Penal Code.

As the matters arise out of the same case and give rise to similar issues, they were heard analogously and are being disposed of by a common order.

Petitioner lodged a written complaint at Usthi police station alleging on 17.10.2018 around 3.30 A.M. his brother Sahabuddin Laskar left the Sherpur Bazar in a motor cycle with one Kuddus Laskar. Around 4 A.M., petitioner received news his brother was lying with injuries in front of Shabedali's shop near Piyajgang. He ran to the spot and found his brother lying with bleeding injuries on his head, neck and hand. Initially, he took him to a local hospital and thereafter shifted him to P.G. Hospital in Kolkata. While going to the hospital his brother stated that he had been assaulted by one Kahar Ali Laskar (O.P. No.2 in CRM 10942 of 2019), Atiar Rahaman Laskar (O.P. No. 2 in CRM 2100 of 2019), Harun Laskar and Ikbāl Rasid Sardar @ Rojab (O.P. No. 2 in CRM 2103 of 2019). At P.G. hospital, his brother breathed his last.

On the written complaint lodged by petitioner, Usthi P.S. case No. 434 of 2018 dated 17.10.2018 under Section 302/34 Cr.P.C. came to be registered against the aforesaid accused persons. In course of investigation, Kahar Ali Laskar, Atiar Rahaman Laskar,

Harun Rashid Sardar and Ikbal Rasid Sardar @ Rojab were arrested. By the aforesaid impugned orders they have been released on bail.

Mr. Chattopadhyay appearing for the petitioner has assailed the impugned orders granting bail to the opposite party-accuseds on various grounds. He submits gravity of the offence and the evidence collected in support of accusation were not considered. Oral dying declaration of the deceased implicate all the opposite party-accuseds. Names of two of the opposite party-accuseds, namely, Kahar Ali Laskar and Atiar Rahaman Laskar also appear in the injury report prepared at the time of admission of the victim at P.G. Hospital. Without considering the aforesaid materials, court below enlarged the opposite party-accuseds on bail. Subsequent to their release on bail, they threatened the petitioner and other witnesses. This compelled the petitioner to approach this court for various reliefs under Article 226 of the Constitution of India including further investigation of the case.

Mr. Das for the State produces the case diary and supports the contentions of the petitioner.

Mr. Mondal appearing for Atiar Rahaman Laskar and Ikbal Rasid Sardar @ Rojab submit the most vital eye witness, namely, Kuddus Ali Laskar has not named his clients in his statement under Section 164 Cr.P.C. Oral dying declaration of the victim made to his brother ought to be taken with a pinch of salt. Name of Ikbal Rasid Sardar @ Rojab does not appear in the injury report at the time of admission at P.G. hospital. Injury report is not signed

by the victim. Allegation of threatening witnesses are out and out false.

Mr. Abdul Hamid Molla appearing for Kahar Ali Laskar adopts the submissions of Mr. Mondal. In addition, he submits petitioner was not satisfied with the investigation of the case and has prayed for further investigation. His client is residing at a far off from the place of occurrence. Hence, allegations of threat is out and out false.

Firstly, we have examined the orders granting bail to the opposite party-accuseds, namely, Kahar Ali Laskar, Atiar Rahaman Laskar and Ikbal Rasid Sardar @ Rojab on the ground of perversity. Instant case relates to the brutal murder of one Sahabuddin Laskar. Post mortem shows that the victim had been repeatedly assaulted resulting in serious injuries on head, neck and other vital parts of body which caused his death. There are ample materials on record establishing the brutal homicidal death of the victim which underscores gravity of the offence. In view of such grave accusation, it was incumbent on the court to examine all relevant materials collected during investigation particularly oral dying declarations of the victim made to his brother and other witnesses. It was contended before the court below in Criminal Misc. Case No. 431 of 2018 and 417 of 2018 that oral dying declaration made to the brother/de-facto complainant be ignored as names of the assailants did not transpire in the medical papers. Original case diary is produced before us. We have examined the medical papers which clearly show the names of Atiar Rahaman Laskar, Kahar Ali

Laskar and one Harun Rashid as the assailants. Hence, it cannot be said that names of the assailants did not transpire at the earliest opportunity in the medical papers.

The court below failed to consider this vital issue and was persuaded on the incorrect submission that no statement was made before the doctor implicating the accused persons to grant bail to the opposite party-accuseds. It is argued, Ikbal Rashid Sardar @ Rojab is not named in the injury report. However, oral dying declaration made by the deceased to his brother is corroborated by other witnesses namely Karima Bibi (wife of the deceased), Sultan Ahmed Laskar (son of the deceased) and one Hasan Faruk Laskar (an independent witness) implicates all the opposite party-accuseds including Ikbal Rashid Sardar @ Rojab in the murder. Statement of the independent witness, namely, Hasan Faruk Laskar was recorded under Section 164 Cr.P.C. which implicates all the opposite party-accuseds herein. These aspects of the prosecution case were wholly ignored by the court below. On the other hand, the court was inclined to grant bail in Criminal Misc. Case No. 431 of 2018 and 417 of 2018 primarily on the premise of deficiency in investigation, namely, delayed examination of Kuddus Ali Laskar. With regard to Ikbal Rashid Sardar @ Rojab, the court below merely referred to completion of investigation as justification for grant of bail.

Learned Counsels appearing for the accused persons have strenuously argued Kuddus was the pillion rider and the best witness. Examination of the case records show although incident

occurred in 17.10.2018 the said witness had been examined under Section 161 Cr.P.C. after a month, that is, 23.11.2018 wherein he implicated the opposite party-accuseds. After about six months, his statement was recorded under Section 164 Cr.P.C. when he remained mum and did not support the prosecution case. Failure to promptly examine Kuddus Ali Laskar is a deficiency in investigation and his prevarication in all probability is due to the ominous influence of opposite party-accuseds who had been released on bail by then. These issues cannot overshadow the most vital evidence of sterling value, namely, oral dying declaration of the victim. Non-consideration of the said oral dying declaration is wholly perverse and order granting bail is liable to be set aside on this score alone.

In addition thereto, there are allegations of threat held out by the opposite party-accuseds upon the petitioner and other witnesses. Complaining of such threat and indifferent investigation petitioner was constrained to approach this court under Article 226 of the Constitution of India as well as the trial court for further investigation.

These circumstances weigh heavily upon us to come to the irresistible conclusion that permitting the opposite party-accuseds to continue on bail would be contrary to the interest of justice and endanger the safety of witnesses and endanger a fair prosecution.

For the aforesaid reasons, we cancel the bail granted to the said opposite party-accuseds namely, Kahar Ali Laskar, Atiar Rahaman Laskar and Ikbal Rasid Sardar @ Rojab. They are

directed to surrender before the court below within seven days from date.

In the event they fail to do so, court below as well as investigating agency shall resort to necessary processes for their apprehension in accordance with law.

Observations made in this order are for disposal of the application and shall not have any bearing at the subsequent stages of the proceeding which needless to mention shall be adjudicated independently and in accordance with law.

Applications for cancellation bail being CRM 2100 of 2019, CRM 2103 of 2019 and CRM 10942 of 2019 are allowed.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)