

23.03.2022
Ct.No.28
12 to 14
cm/as

CRR 3626 of 2018
In
C.R.M. 10410 of 2018
with
CRM 1266 of 2019
with
CRM 667 of 2019

In Re : Court on its own motion.

..... petitioner

Ms. Subhasree Patel,
Mr. Saikat Mondal.

... for the petitioner in
CRM 10410/2018.

Mr. Mrityunjoy Chatterjee,
Mr. Partha Sarathi Mondal.

... for the O.P. in
CRM 667/2019.

Mr. Prolay Bhattacharya.

... for the petitioner in
CRM 3626/2018.

Mr. Anand Keshri,
Ms. Puja Mahapatra.

... for the O.P. in
CRM 1266/2019.

Mr. Neguive Ahmed, Ld. A.P.P.
Ms. Amita Gaur

... for the Petitioner/State
In CRM 1266 of 2019
In CRM 667 of 2019

Mr. Neguive Ahmed, Ld.A.P.P.
Ms. Trina Mitra

.... For the State
In CRM 10410 of 2018

In Re: CRM 1266 of 2019

State has filed this application for cancellation of anticipatory bail and consequential order of regular bail granted to the opposite party Prokash Mondal @ Bubai.

By order dated 10.10.2018 in CrI. Misc. Case No.5756 of 2018 passed by the learned Sessions Judge, South 24-Paraganas Alipore the said court was pleased to grant anticipatory bail to the petitioner, inter alia, on the ground that he was an aged and ailing person and that investigation of the case is complete.

Mr. Ahmed, learned Additional Public Prosecutor submits that the submissions made on behalf of the opposite party before the learned Court that he was an aged person is contrary to the materials on record. In fact, in the affidavit accompanying the application for anticipatory bail, the opposite party is stated to be aged about 28 years. Ailment of the opposite party is also not serious and does not justify the grant of anticipatory bail in view of the gravity of the offence. It is further argued gravity of the offence and the prima facie involvement of an accused are relevant considerations which were wholly ignored by the learned Sessions Judge while granting pre arrest bail. He accordingly prays the order of pre arrest bail as well as the consequential order of regular bail be cancelled.

Mr. Keshri, learned Advocate appearing for the opposite party/accused submits his client was barely 20 years old at the time of occurrence. He is suffering from arachnoid cyst anterior to left temporal region and is under treatment. He however was unable to explain why it was submitted before the Sessions Judge on behalf of his client that he is an aged

person. It is further contended he has regularly attended the trial proceedings which have substantially progressed. Hence, prayer for cancellation of bail may be refused.

In view of the aforesaid submissions on behalf of the opposite party, we called upon the State to submit report with regard to the status of the trial. From the report and the annexures thereto, we note six prosecution witnesses have been examined as yet. P.W.1, Rakhi Mondal, P.W.2, Kalipada Mondal and P.W.4 Krishna Das one eye witnesses to the incident have unequivocally stated that opposite party along with others had assaulted the victim to death. P.W.6, Pankaj Mali (who was examined during the pendency of the cancellation application) after stating that brothers of Paran Mondal had dragged the victim altered his stance and stated the opposite party as well as the other accused persons who were present in Court were not the persons who had dragged the victim. As his stance in the course of deposition was inconsistent and gave an impression that the witness had been won over by the accused persons, he was declared hostile.

It is trite law while considering a prayer for anticipatory bail the enquiry of Court is not restricted to the necessity of custodial interrogation for the purposes of the investigation alone but also extends to the gravity and seriousness of the offence as well as the prima facie involvement of the accused therein.

Learned Sessions Judge appears to have completely glossed over the gravity and seriousness of the offence and the prima facie involvement of the opposite party who appears to be one of the assailants of the deceased. Furthermore, the court below was persuaded to grant anticipatory bail to opposite party herein on the premise he was an aged person. Such submission made on behalf of the opposite party is out and out false and not borne out from the records before us. In the application for pre-arrest bail, opposite party had claimed he was 28 years old while before this Court a birth certificate is annexed in the affidavit filed on his behalf wherefrom it appears he was about 20 years of age at the time of occurrence.

We have also considered the issue of ailment of opposite party no.2 and have gone through the medical certificates annexed in support of such plea. We find that the opposite party has been conservatively treated and the seriousness of his ailment cannot be said to be of such nature which would persuade the Court to grant pre-arrest bail ignoring the nature and gravity of the offence. Thus, the order impugned suffers from clear non-application of mind and non-consideration of relevant factors relating to the gravity of the crime.

It has been finally contended that the opposite party/accused has duly participated in the trial and trial has progressed substantially. We have perused the evidence on

record which shows active involvement of the opposite party/accused in the murder.

In view of the aforesaid facts, we are of the opinion the order of anticipatory bail and consequential order of regular bail granted to the opposite party/accused requires to be cancelled.

Opposite party/accused is directed to surrender before the trial court within seven days from date, failing which the court below shall take necessary steps and issue appropriate processes for the apprehension and production of the opposite party before the said court in accordance with law.

In Re: CRM 667 of 2019.

Order dated 22.10.2018 passed by the learned Vacation Judge, South 24-Paraganas Alipore in CrI. Misc. Case No.5728 of 2018 granting pre-arrest bail to opposite party Subal Mondal @ Bhodo and the consequential order of regular bail is assailed on behalf of the State.

Mr. Ahmed, learned Additional Public Prosecutor submits that the pre-arrest bail was granted to Subal Mondal @ Bhodo without application of mind and on the premise co-accused Prokash Mondal has been granted similar relief. This Court has cancelled the pre-arrest bail of Prokash Mondal in CRM 1266 of 2019. Hence, the impugned order be also cancelled.

Learned Advocate appearing for the opposite party Subal Mondal submits upon consideration of the materials in the case diary and the nature of offence, order of pre-arrest bail had been passed. It is further submitted opposite party has regularly attended the trial proceeding which has substantially progressed. Hence, this Court may not be inclined to deprive the opposite party of the liberty granted to him.

The instant case involves a brutal murder of one Paran Mondal by opposite party Subal and other accused persons. From the materials on record it appears opposite party Subal Mondal and other accused persons had mercilessly assaulted the victim resulting in his death.

Court below had granted pre-arrest bail to opposite party Subal Mondal @ Bhodo, inter alia, on the following grounds, i.e. co-accused Prokash Mondal had been extended similar relief and his custodial interrogation was not necessary. None of the aforesaid reasons justify the grant of pre-arrest bail to opposite party Subal Mondal. Prokash Mondal had been granted pre-arrest bail on the strength of false submission that he was an aged person and suffering from debilitating ailments. In CRM 1266 of 2019, we have given our reasons why pre-arrest bail granted to Prokash Mondal suffers from gross non-application of mind and non-consideration of the relevant factors viz., gravity and seriousness of the offence and prima facie materials

connecting the accused to such gruesome crime. In the present case also the Court below erred in granting pre-arrest bail merely on the consideration custodial interrogation is not necessary. The Court while granting pre-arrest bail is required to look into the gravity and the seriousness of the offence and the complicity of the accused therein. Without considering the aforesaid factors, the Court proceeded to grant pre-arrest bail to the opposite party herein. Court was also persuaded to grant such relief as co-accused Prokash Mondal had been granted similar relief. Prayer for cancellation of bail of Prokash Mondal has been allowed by this Court in CRM 1266 of 2019. Moreover, the materials on record clearly disclose active participation of the opposite party and others in assaulting the victim resulting in his death.

For the aforesaid reasons, we hold that the order granting pre-arrest bail to opposite party- Subal Mondal @ Bhodo suffers from patent illegalities and is wholly perverse. Hence, the impugned order granting anticipatory bail and consequential order of regular bail is set aside.

Opposite party/accused is directed to forthwith surrender before the trial court within seven days from date, failing which the court below shall take necessary steps and issue appropriate processes for apprehension and production of the opposite party before the court below in accordance with law.

In Re: C.R.R. 3626 of 2018

During the hearing of a subsequent bail application of one Jiban Mondal @ Bhola, this Court noticed without considering the earlier rejections of bail prayer of the said accused, co-accused persons viz., Suman Mondal, Sujan Mondal and Panchu Gopal Mondal had been enlarged on bail by the Court below. Accordingly, a suo moto Rule for cancellation of their bail was issued upon the said accused persons. They responded to the said Rule and filed affidavits.

Mr. Prolay Bhattacharjee, learned Advocate appearing for the accused Suman Mondal and Sujan Mondal submits that his clients were released on bail on 2.11.2018 keeping in mind the period of detention. They have co-operated with the trial and hence, they may be permitted to continue with the bail granted earlier.

Similarly, Mr. Partha Sarathi Mondal, learned Advocate appearing Panchu Gopal Mondal submits that his client was granted bail on 5.11.2018 inter alia on the ground that he was in custody for 135 days and investigation was complete. The Court had also taken note of the fact that co-accused persons were on bail. He has participated in the trial and, therefore, bail granted to him may not be interfered with.

Firstly, coming to the order dated 2.11.2018 granting bail to Sujan Mondal and Suman Mondal, we note that Additional Public Prosecutor had brought to the notice of the Court below that bail prayer of co-accused Jiban Mondal @

Bhola had been repeatedly turned down by this Court. In fact, bail prayer of Jiban Mondal had been turned down by this Court on 5.10.2018 and 10.10.2018 respectively, i.e. barely three weeks prior to the consideration of bail of co-accused Subal Mondal @ Bhodo and Sujan Mondal. There is no dispute that Sujan Mondal and Suman Mondal stand on the same footing with co-accused Jiban Mondal with regard to their complicity in the crime. All of them along with other accused persons conjointly assaulted the victim resulting in his unfortunate death. Rejection of bail of a similarly situated co-accused by a superior Court is a relevant consideration while considering the prayer for bail of other accused persons. In the impugned order, the Court below appears to have completely ignored such fact and was persuaded to grant bail on the ground that two other accused persons viz., Prokash Mondal @ Bubai and Subal Mondal @ Bhodo had been granted pre-arrest bail by the Sessions Judge. Although power to grant bail under Sections 438/439 of the Code of Criminal Procedure vests both in the Sessions Court as well as the High Court, judicial decorum and comity of courts demand that the Sessions Court while considering bail prayer of an accused must give due attention and weightage to rejection of similar prayer of a co-accused who stands on the same footing with one seeking bail. No reason was assigned by the Court below why he ignored the rejection of bail by this Court to co-accused Jiban Mondal @ Bhola but was

persuaded by grant of pre-arrest bail to other accused persons by the Sessions Judge. This is a gross example of whimsical and cavalier exercise of discretion without bearing in mind the principles of judicial decorum and comity of courts.

That apart, we note that Sujan Mondal and Suman Mondal were in custody barely for three months when they were enlarged on bail. The present case involves a brutal murder of one Paran Mondal by the accused persons who indiscriminately assaulted him with bamboo sticks and iron rod etc. Gravity and seriousness of the offence and the materials connecting the accused persons with such crime was wholly ignored by the Court below. Mere completion of investigation in grave cases involving murder and rape cannot be a ground to release the accused persons on bail.

For the aforesaid reasons, we are of the opinion the orders granting bail to Sujan Mondal and Suman Mondal dated 2.11.2018 and 5.11.2018 are wholly perverse and contrary to settled principles of judicial propriety and comity of courts. Hence, the same is liable to be set aside.

Coming to the order granting bail to Panchu Gopal Mondal, we note that the bail order also suffers from similar defects as in the case of Sujan Mondal and Suman Mondal. In fact, the Judge was persuaded to grant bail to Panchu Gopal Mondal on the premise bail had been granted to Sujan Mondal and Suman Mondal and another co-accused Subal

Mondal @ Bhodo was granted pre-arrest bail. This Court has for reasons recorded in CRM 667 of 2019 cancelled bail of Sujan Mondal, Suman Mondal as well as that of Subal Mondal @ Bhodo. Evidence recorded till date particularly of P.Ws1, 2 and 4 show that Panchu Gopal Mondal stands on the same footing with other accused persons and played active role in the murder of the deceased. Gravity of the offence and the prima facie involvement of accused Panchu Gopal Mondal was not considered by the Court below while enlarging him on bail. Impugned order also runs contrary to the repeated rejections of bail prayer of co-accused Jiban Mondal on 5.10.2018 and 10.10.2018 respectively by this Court, who stands on the same footing with Panchu Gopal Mondal.

In view of the reasons we are inclined to set aside the impugned order dated 5.11.2018 granting bail to Panchu Gopal Mondal.

He is directed to forthwith surrender before the trial court within seven days from date, failing which the court below shall take necessary steps and issue appropriate processes for apprehension and production of the opposite party before the court below in accordance with law.

Rule is made absolute.

In Re : CRM 10410 of 2018.

Having considered the materials on record prima facie disclosing involvement of the petitioner Jiban Mondal in the

alleged crime more particularly the evidence of P.Ws.1, 2 and 4 who are eye witnesses and disclose the active role of the petitioner in assaulting the victim resulting in his death. Hence, we are of the opinion that this is not a fit case to grant bail to him.

Moreover, delay in progress of trial was due to intervening pandemic condition which has presently abated. Under such circumstances, it is expected that the trial Court shall proceed with expedition and conclude the trial at the earliest subject, however, to co-operation by the petitioner and other accused persons whose bail order has been cancelled today.

Accordingly, CRM 10410 of 2018 is rejected.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)