

24.02.2022
Sl. No.16
akd

C. R. M. 6893 of 2020 [via video conferencing]
(CRAN 1 of 2020)

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 15.09.2020 :

A N D

The State of West Bengal vs. Pradyut Mondal @ Pradut Mondal

Mrs. Sujata Das

... .. for the petitioner

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Pritam Roy

... .. for the opposite party

Order dated 28th March, 2020 passed by the learned Sessions Judge, South 24-Parganas at Alipore granting bail to opposite party-Pradyut Mondal @ Pradut Mondal has been assailed on behalf of the State.

Mrs. Sujata Das, learned advocate appearing for the petitioner-State submits that the court below did not consider the relevant facts and enlarged the opposite party-Pradyut Mondal @ Pradut Mondal on bail. This court has cancelled the order granting bail to co-accused-Mahadev Saha in CRM 6932 of 2020. The court below also did not consider that the graver offence under Section 302 of the Indian Penal Code had been added to the array of offences. Hence, the order granting bail to opposite party-Pradyut Mondal @ Pradut Mondal is liable to be cancelled.

Mr. Rajdeep Majumder, learned advocate appearing for the opposite party-Pradyut Mondal @ Pradut Mondal submits that the order granting bail is a well reasoned one. The court below considered addition of offences under Section 302 of the Indian Penal Code. After

considering the period of detention suffered by the opposite party-Pradyut Mondal @ Pradut Mondal i.e. 180 days and as investigation was complete, he was released on interim bail which is continuing till date. Co-accuseds similarly placed with the petitioner are on bail. There is no allegation of misuse of liberty by the opposite-party.

This court while considering a prayer for cancellation of bail is not restricted only to the evaluation of post-bail conduct of the accused. In the event the order granting bail is perverse or is based on irrelevant considerations or is passed without considering the relevant factors, the court may intervene and set aside the order granting bail. However, since cancellation of bail adversely impacts liberty of an individual, it would be advisable for the court in such circumstances to independently examine the materials on record and subsequent developments in order to satisfy itself whether forfeiture of liberty is necessary in the interests of justice. In other words, though the order of bail may not be a well reasoned one, forfeiture of liberty is not justified if reasons supporting conferment of liberty is evident from the materials on record and other attending circumstances of the case.

We have examined the order granting bail to opposite party-Pradyut Mondal @ Pradut Mondal from this premise. No doubt, the order granting bail leaves much to be desired. The court below had not adverted to the gravity of the offence or the role played by the opposite party-Pradyut Mondal @ Pradut Mondal therein. Hence, we have made an endeavour to examine all relevant aspects as appearing from the materials on record including records of investigation.

Perusal of the statements recorded under Section 161 of the Code of Criminal Procedure show that opposite party-Pradyut Mondal @ Pradut Mondal was present at the place of occurrence. However, deeper

analysis of their statements disclose the incident occurred in two stages. Victim was mercilessly assaulted in the second stage of the incident by Parimal Saha, Sankar Halder, Paritosh Mistry and Mahadev Saha. Allegation of assault by the other accused persons including opposite party-Pradyut Mondal @ Pradut Mondal are, however, general and omnibus in nature.

In this backdrop, this court as well as the court below has granted bail to the other accused persons against whom the allegation of assault is general and omnibus. When witnesses speak of varying roles of different accuseds in an incident, whether all of them shared common intention/common object to commit the crime requires to be assessed by analysing the entire evidence on record which can be best done during trial.

Thus, at the interim stage, making a distinction between the graphic roles of the principal accused vis-à-vis others against whom the allegations are more generic, this court as well as the court below had granted bail to the latter group of accused persons. Opposite party-Pradyut Mondal @ Pradut Mondal stands in the same footing with those who have been enlarged on bail as the allegations against him are general and omnibus. However, prayer for bail of the principal assailants whose roles were graphically described by the witnesses including Paritosh Mistry and Mahadev Saha have been turned down/cancelled. Suo motu Rule for cancellation has also been issued against another principal assailant namely, Sankar Halder, who, in our estimation, was erroneously enlarged on interim bail by an incorrect interpretation of the recommendation of the High Powered Committee.

In view of the aforesaid discussion, we are of the view opposite party-Pradyut Mondal @ Pradut Mondal is not one of the

principal assailants of the victim. Allegations against him are general and omnibus. Whether he shared common intention/common object with the principal accuseds to commit murder requires to be assessed in course of trial. He had already suffered detention for more than six months and upon consideration of the addition of graver offence under Section 302 IPC was enlarged on bail.

These factors appear from the materials on record and sustain the continuation of liberty of the opposite party-Pradyut Mondal @ Pradut Mondal who clearly stands on a different footing from co-accused namely, Mahadev Saha whose bail has been cancelled in CRM 6932 of 2020. There is no allegation of misuse of liberty by the opposite party-Pradyut Mondal @ Pradut Mondal also.

Under such circumstances, we do not wish to interfere with the bail granted to opposite party-Pradyut Mondal @ Pradut Mondal.

CRM 6893 of 2020 is accordingly, dismissed.

In view of dismissal of the application, connected application being CRAN 1 of 2020 is also disposed of.

Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)