

24.02.2022
Sl. No.17
akd/cm

C. R. M. 6932 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. Mahadev Saha

Mr. Sabir Ahamed
... .. for the petitioner

Mr. Manjit Singh
Mr. Gaganjyot Singh
Mr. Biswajit Mal
... .. for the opposite party

Perused report of State Legal Services Authority, West Bengal.

In the report it is stated as follows :

“That the aforesaid three names were included in the list of 2125 UTPs, placed before the High Powered Committee during its meeting held on 27.04.2020. Details of the aforesaid UTPs. are furnished hereunder :

Sl. No.	Correctional Home	Name of UTPs	Offence	Date of Release
01.	Presidency CH	Sankar Halder	U/s. 307/326/324/34 IPC	09-05-20
02.	Presidency CH	Subhankar Seal	U/s. 307/326/324/34 IPC	09-05-20
03.	Presidency CH	Sanjoy Mistry	U/s. 307/326/324/34 IPC	09-05-20

That the proposal was approved by the Hon’ble High Powered Committee (HPC) only so far it was related to offences punishable with imprisonment for not more than 10 years.”

From the aforesaid observation, it appears the High Powered Committee considered prayers for release of Sankar Halder, Subhankar Seal and Sanjoy Mistry on interim bail. In the present case, on 27th April, 2020 the Committee approved the proposals insofar as it related to offences punishable with imprisonment for not more than 10 years. At

that material point, aforesaid accused persons were charged for commission of offence punishable under Section 307 IPC which is punishable with life imprisonment. Subsequently, on 19th May, 2020, offence under Section 302 IPC was added to the array of offences. A plain reading of the proposal of the Committee would show it recommended release for accuseds who are accused of offences punishable with imprisonment not more than 10 years. Offence under Section 307 IPC does not fall in such category. Without application of mind to such restriction, trial court released the aforesaid accused persons on bail on the understanding that the High Powered Committee has recommended their release. Prima facie, release of the aforesaid accused persons are contrary to the recommendation of the High Powered Committee.

Mr. Sabir Ahamed, learned advocate appearing for the petitioner-State submits that the said accused persons are still continuing on interim bail.

Under such circumstances, we issue a *suo motu* Rule calling upon the said accused persons namely, Sankar Halder, Subhankar Seal and Sanjoy Mistry to show cause why their interim bail be not cancelled.

Rule is made returnable four weeks hence.

Department is directed to serve the Rule upon the accused persons.

Order dated 7th March, 2020 granting bail to opposite party-Mahadev Saha has been assailed on behalf of the State.

Mr. Sabir Ahamed, learned advocate appearing for the petitioner-State submits that opposite party-Mahadev Saha has been enlarged on bail after detention of only 25 days without considering the gravity of the offence. He was one of the principal assailants of the victim

who ultimately succumbed to his injuries and offence under Section 302 of the Indian Penal Code was added to the array of offences. Mr. Ahmed further submits that subsequent to addition of Section 302 of the Indian Penal Code, order of bail granted to opposite party-Mahadev Saha in respect of lesser offence no longer survives in view of the law declared by the Apex Court in the case of ***Pradeep Ram vs. State of Jharkhand & Anr.***¹ Hence, Mr. Ahamed prays for cancellation of bail.

Mr. Manjit Singh, learned advocate appearing for the opposite party-Mahadev Saha submits that the incident occurred on 23rd January, 2020. Victim ultimately succumbed to injuries four months later on 19th May, 2020. There is a considerable time gap which shows that the injuries were not sufficient to cause death. Victim would have survived if proper medical attention had been extended to him. It is also submitted that a number of accused persons have been enlarged on bail including Sankar Halder, who stands on the same footing with opposite party-Mahadev Saha. It is also submitted that opposite party-Mahadev Saha has duly complied with the conditions of bail imposed upon him.

Since ***Puran vs. Rambilas***², it is no longer *res integra* that a court while considering the prayer for cancellation of bail would not confine its enquiry to post-bail conduct only. But it shall be the duty of the court to consider whether the order granting bail suffers from perversity or the bail had been granted without considering relevant materials.

I have chosen to examine the order granting bail to opposite party-Mahadev Saha from that perspective.

While granting bail to an undertrial, the Court must pay attention to the following aspects of the case :-

¹ (2019) 17 SCC 326

² (2001) 6 SCC 338

- a) *nature and gravity of the offence;*
- b) *complicity of the accused in the crime;*
- c) *whether detention is necessary for progress of investigation;*
- d) *evidence/materials collected in support of the accusation;*
- e) *possibility of the accused to commit similar offence in future;*
- f) *possibility of his abscondence and not being available during trial;*
- g) *possibility of tampering with evidence or intimidating witnesses;*
- h) *period of detention suffered by the undertrial;*
- i) *possibility of conclusion of trial within a reasonable time frame;*
- j) *special considerations keeping in mind the age, gender and other extenuating circumstances peculiar to the accused and*
- k) *impact of the order granting bail on the society in general and the victim and his family in particular;*

Perusal of the order impugned shows the gravity and the seriousness of the offence and the involvement of the opposite party-Mahadev Saha therein have not been considered at all. On the other hand, we note with grave concern that the court was misled by the learned Public Prosecutor-in-charge who stated that there was no specific allegation against the accused.

We have gone through the statements of the eyewitnesses who categorically stated that opposite party-Mahadev Saha was one of the principal accuseds who along with Parimal Saha, Sankar Halder and Paritosh Mistry mercilessly beat the victim resulting in extensive injuries and ultimate death. Role of opposite party-Mahadev Saha has been specifically and succinctly disclosed by the eye-witnesses in their statements under Section 161 of the Code of Criminal Procedure. In the

backdrop of the aforesaid materials, we are at a loss how the Public Prosecutor-in-charge could have made such concession before the court below in favour of opposite party-Mahadev Saha.

When, an order of bail has been passed on the basis of an erroneous concession on vital aspects, that is nature and gravity of the offence and the primary role played by opposite party-accused, the same is clearly perverse and cannot survive legal scrutiny. More so, subsequent to grant of bail the gravity of offence has been substantially altered and offence under Section 302 IPC has been added. On this score alone, the bail of the opposite-party is liable to be cancelled.

However, since an order of cancellation would impact the freedom of an individual, we have chosen to independently examine the materials on record on the anvil of the submissions made at the bar to satisfy ourselves whether liberty of opposite party-Mahadev Saha requires to be forfeited or not.

It is contended the victim survived for four months and effective medical attention could have saved his life.

Explanation 2 of Section 299 of the Indian Penal Code reads as follows :

“S.299. Culpable homicide - * *** *****
Explanation 2. – Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

In the present case, statements of eye-witnesses show the opposite party-Mahadev Saha along with his associates chased, dragged and thereafter mercilessly beat the victim with *lathi*. Ocular versions of the witnesses are corroborated by the extensive injuries noted in the post-mortem report. Speculation whether better and more effective

medical care would have saved the victim would not take out the culpable acts of the accused persons beyond the penal ambit of Sections 299/300 of the Indian Penal Code in view of Explanation (2) (*supra*). There is also no material on record to show that the case fell within any of the exceptions to Section 300 of the Indian Penal Code. On the other hand, the manner in which opposite party-Mahadev Saha and others being variously armed mercilessly attacked the victim resulting in extensive injuries clearly show they had the intention to cause bodily injury which is likely to cause death. Interregnum between the assault and ultimate death of the victim has to be seen in the backdrop of other parameters which, *prima facie*, disclose ingredients of the offence of murder.

It is true some of the co-accused persons have been enlarged on bail by this court as well as the court below. However, they do not stand on the same footing with opposite party-Mahadev Saha. Eyewitnesses have attributed fatal blows upon the victim by opposite party-Mahadev Saha, Parimal Saha, Sankar Halder and Paritosh Mistry. No doubt their statements also show that other accused persons were present at the place of occurrence. However, deep scrutiny of their statements would reveal that the incident occurred in two stages and the allegation of assault on the deceased occurred in the second stage. Witnesses have given graphic description of the roles of opposite party-Mahadev Saha, Parimal Saha (since deceased), Sankar Halder and Paritosh Mistry in the assault of the victim resulting in severe injuries and death. Allegation against the other accused persons who have been released on bail are general and vague in nature. Hence, opposite party-Mahadev Saha does not stand on the same footing with co-accuseds who are on bail. On the other hand, this court in CRM 7700 of 2021 has turned down the prayer

of bail of a co-accused namely, Paritosh Mistry who stands on the same footing with opposite party-Mahadev Saha.

We have also taken note of the inappropriate release on interim bail of another co-accused namely, Sankar Halder purportedly on the basis of recommendation of the High Powered Committee which appears to be wholly incorrect and a suo motu Rule for cancellation of his bail has also been issued. Thus, opposite party-Mahadev Saha cannot seek bail on the premise of negative equality with Sankar Halder.

We are not unconscious of constructive liability under Section 149 of the Indian Penal Code. However, as in the present stage we are addressing ourselves with regard to grant of bail to undertrials and not arriving at a final conclusion with regard to their culpability, we have made a distinction between the principal accused persons whose roles have been graphically described by the witnesses in the assault vis-à-vis others against whom the allegations are generic and omnibus. Their involvement in the crime and sharing of common intention/common object with the principal accused requires to be thrashed out upon a deeper scrutiny of evidence adduced during trial.

In conclusion we hold grant of bail to opposite party-Mahadev Saha after suffering detention barely for 25 days was a product of clear non-application of mind and based on an erroneous concession made on behalf of the prosecution vis-à-vis his role in the crime.

Thus, we are inclined to cancel the bail granted to opposite party-Mahadev Saha. He is directed to surrender before the court below within seven days from date and pray for regular bail in accordance with law. In the event, he appears and prays for regular bail, as aforesaid, trial court shall consider his prayer for bail independently on merits.

We hasten to add observations made by us in this order are for the purpose of disposal of the application and shall not have any bearing in course of trial which needless to mention shall be decided independently and on the basis of the evidence on record.

CRM 6932 of 2020 is accordingly, disposed of.

In view of disposal 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.)