

03.02.2022
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Sdas/PA

CRM 7515 of 2020
with
CRAN 2 of 2020
(via video conferencing)

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

And

In Re : Sanowara Bibi

..... petitioner

Mr. Kishore Mukherjee
Mr. Sankha Shubhra Roy
..... for the petitioner

Mr. Manas Kumar Das
..... for the opposite party nos. 2 & 3

Mr. Madhu Sudan Sur, learned APP
Mr. Manoranjan Mahata
..... for the State

Order dated 17.08.2020 granting bail to the opposite party nos. 2 and 3 accused persons, has been assailed on behalf of the petitioner/de facto complainant.

It is submitted by the learned Counsel appearing for the petitioner that the accused persons are named in the First Information Report. It is also submitted that the accused persons came in a body being variously armed and indiscriminately assaulted a number of persons including the deceased namely Johidul Islam. Their prayer for pre-arrest bail was turned down by this Court in CRM No. 1651 of 2019. Thereafter they absconded for more than one year. Warrant of

arrest was issued against them. Witnesses in the present case had been threatened and a separate case has been registered over such issue against the co-accused and others. Without considering the aforesaid circumstances, trial court, on the mere ground that pandemic conditions are prevailing, granted bail to the accused persons. The petitioner prays for the order granting bail is liable to be set aside.

On the other hand, prayer for cancellation of bail is supported by the learned Counsel appearing for the State. He submits that the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure disclose the names of the petitioners who along with other accused persons had come in a body being variously armed and had assaulted various persons namely Sirajuddulah, Jahir Abbas and Johidul Islam. Out of them, Johidul Islam succumbed to injuries. Specific role of both the accused persons have been disclosed in the said statements.

On the other hand, learned Counsel appearing for the opposite party nos. 2 and 3 submits that name of the opposite party no. 3 was not named in the First Information Report. Due to enmity they have been falsely implicated in the instant case. They had voluntarily surrendered before the court below and due to pandemic conditions they have been enlarged on bail. They are co-operating with the trial court and have not misused their liberty. They are not named as accused persons in the subsequent case registered on the allegation of threatening witnesses.

We have considered the materials on record. Even if an accused does not misuse the liberty granted to him, order granting bail may be cancelled if the same is an unreasoned one or is perverse or is based on extraneous or irrelevant considerations. However, since cancellation of bail impacts the liberty of an individual while considering such prayer, it is necessary for the court not only to examine the legality or propriety of the order granting bail, but evaluating other materials on record including subsequent events in order to satisfy itself whether grant of liberty to the accused do not require interference due to reasons or circumstances other than those reflected in the order impugned.

We have chosen to examine the prayer for cancellation of bail in the instant case from the aforesaid perspective. Upon perusing the impugned order, we find it does not confirm the well-settled principles of granting the bail jurisdiction. It is settled law that while granting an order of bail the court must look into the facts of the case particularly :-

- (a) nature and gravity of the offence;
- (b) extent of complicity of the accused in the offence;
- (c) evidence collected in support of the accusation;
- (d) circumstances peculiar to the accused for example whether the accused is a lady, sick or infirm person;
- (e) possibility of the accused committing similar or other offences;
- (f) possibility of the accused to intimidate witnesses or tamper with evidence; and

(g) possibility of abscondence of the accused;

Testing the order impugned in the aforesaid angle, we note that the court below did not pay any attention to the gravity and the seriousness of the offence and the evidence collected in the course of investigation implicating the opposite party nos. 2 and 3 in the murder. In fact, the Court did not even peruse the case diary and advert to the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure implicating the opposite party nos. 2 and 3. The court ought to have undertaken such exercise and examined the statements of the witnesses particularly injured witness Jahir Abbas @ Current and one Sades Alim, who have unequivocally stated the role of the opposite party nos. 2 and 3 in the crime. Judged from this angle, the order granting bail to the opposite party no. 2 and 3 without perusal of case diary and considering relevant materials which includes nature and gravity of the offence and prima facie involvement of the opposite party nos. 2 and 3 therein suffers from patent perversity and is liable to be set aside on this score alone. Court below was swayed by the fact that the opposite parties no. 2 and 3 had voluntarily surrendered before the court. While doing so the Court failed to consider that they had absconded for more than 1 and ½ years and warrant of arrest had been issued against them. In the interregnum other accused persons had threatened the witnesses resulting in registration of another case. These are weighty considerations which ought to have been taken into consideration by the court

below at the time of enlarging the opposite party nos. 2 and 3 on bail on the premise that they had voluntarily surrendered before the court. Directions of the Hon'ble Apex Court in **Suo Motu Writ Petition (C) No. 1/2020 dated 23.03.2020¹** and **07.05.2021²** proposed constituting High Powered Committees who shall issue directions for early release of prisoners during COVID-19 pandemic keeping in mind the nature and severity of the offence. The aforesaid directions cannot be treated as a mandate for automatic release of an accused irrespective of the gravity of the offence and other attending circumstances. Admittedly, the opposite party no. 2 and 3 do not fall within any category of prisoners proposed for release by the High Powered Committee. The court below has wholly misunderstood the aforesaid directions and illegally released the opposite party no. 2 and 3 without considering relevant considerations.

That apart, on an independent consideration no extenuating circumstance justifying the order of bail is evident in the factual matrix of the case.

For the aforesaid reasons, we are of the opinion that the order of bail is wholly unsustainable and is liable to be cancelled. Opposite party nos. 2 and 3 are directed to appear before the court below within seven days from date and pray for regular bail in accordance with law. In the event they fail to

¹ 2020 SCC OnLine SC 344

² 2021 SCC OnLine SC 376

do so, it shall be open to the investigating agency to take appropriate steps for their apprehension.

Accordingly, application for cancellation of bail being CRM No. 7515 of 2020 is allowed.

In view of disposal of the main application, connected application being CRAN 2 of 2020 is disposed of.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)