

04.05.2023
tkm/ct 28
sl no. 31-32

C.R.M. (DB) 119 of 2023
with
C.R.M. (DB) 136 of 2023

In Re : An application under section 439(2) of the Code of Criminal Procedure

And

In Re : Md. Samiuddin petitioner

Mr. Angshuman Chakraborty
Md. Z Abedin

..... for the petitioner

Mr. N Ahmed
Mr. A Roy

..... for the State in CRM(DB) 119/23

Mr. Joydeep Roy
Ms. Sujata Das

..... for the State in CRM(DB) 136/23

Mr. Ayan Bhattacharya
Mr. Aniruddha Bhattacharyya
Ms. Ritwika Ghosh
Mr. Uttam Mukherjee

..... for OPs

Both the applications for cancellation of bail are taken up together and dispose of with a common order. In CRM (DB) 119 of 2023 order granting bail to aunt-in-law Musarrat Begum has been assailed, while in CRM (DB) 136 of 2023 bail granted to uncles-in-law, namely, Md. Alauddin and Md. Sirajuddin have been assailed.

Learned lawyer for the petitioner submits learned judge had failed to consider the dying declarations of the housewife which implicate the opposite party/accuseds. It is further contended that the investigation was conducted in a biased manner and statements of neighbours disclosing incorrect state of affairs were procured to screen the real offenders. Prayer was made by the petitioner for recording his statement and that of the mother of the victim before Magistrate which was not done. In this perspective,

learned Chief Judge had recorded his disapproval regarding the conduct of the investigating officer and directed Joint CP (Crime) LalBazar, Kolkata to look into the matter.

On the other hand Mr. Bhattacharya for the opposite party/accuseds submits that the principal allegations are against the mother-in-law Munira Bibi. No role has been ascribed to others in setting the housewife on fire. Allegation that Alauddin did not rescue her but made videography of the incident is not supported by independent evidence. There is no allegation of misuse of liberty. Hence bail may not be cancelled.

Learned lawyer for the State produces the case diary.

Order granting bail to opposite party/accuseds have been challenged on the ground that they are perverse.

Gist of the accusation against them is to the effect that there was a quarrel between the couple i.e. the petitioner and his wife Nikhat on the one hand and their mother-in-law Munira Bibi and other in-laws i.e. uncles in law Sirajuddin, Alauddin and aunt-in-law Musarrat Begum.

On the fateful day it is alleged the housewife was set on fire by Munira Bibi. Alauddin assisted Munira Bibi in the act. Other co-accused Sirajuddin and Musarrat Begum were present in the house. Sirajuddin had switched off the electricity in the house. Soon after the incident husband of the victim i.e. the petitioner arrived at the spot and took his wife to NRS Medical College and Hospital. At the time of admission, the petitioner and his wife informed the doctor that the mother-in-law Munira Bibi with the

assistance of Alauddin had set the housewife on fire. Subsequently, a more elaborate dying declaration was recorded wherein the names of Sirajuddin and Musarrat Begum have also been taken. Learned judge ignored the aforesaid dying declarations with reference to the statements of neighbours namely Rani Khatoon and Rajia Sultana who claimed that the housewife had committed suicide. Serious aspersion has been cast on the fairness of investigation. Learned Chief Judge, City Sessions Court while considering the bail application of Alauddin and Sirajuddin had noted his displeasure with regard to inaction of the investigating officer to record the statements of the petitioner and the mother of the victim before Magistrate.

Under these circumstances and as the neighbours had appeared at the spot after the arrival of the husband of the deceased, we are of the view learned judge ought not to have ignored the dying declarations of the victim in face of the aforesaid statements which appear to be unworthy of credence. We, however, note that there is an improvement in the subsequent dying declaration. The first declaration was made by the victim and her husband at the time of admission at the hospital. At that time, it was alleged that the victim had been set on fire by Munira Bibi with the assistance of Alauddin. Subsequent declaration appears to be an improved version showing presence of other accuseds namely Sirajuddin and Musarrat Begum. It is possible that the subsequent statement of the victim was an overjealous effort on her part to implicate all the in-laws. But, it is undeniable that in both the

declarations of Munira Bibi Alauddin have been implicated. Both the statements were recorded in presence of doctor and competency/capacity of the maker does not appear to be in question.

In the light of the aforesaid discussion, we note both the dying declarations of the victim implicate Alauddin as an abettor in the murder. They were ignored by the trial judge on flimsy and irrelevant grounds.

Hence, we are inclined to cancel the bail of Alauddin i.e. opposite party no. 2 in CRM(DB) 136 of 2023.

Names of Sirajuddin and Musarrat Begum did not appear in the first statement of the victim and her husband at the time of admission. Possibility of roping them in the subsequent statement cannot be ruled out. Hence, we are not inclined to cancel their bail.

Alauddin is directed to surrender forthwith before the trial court failing which the said court and/or investigating agency shall resort to appropriate process for his apprehension in accordance with law.

With the above observations, applications are disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)