

26.04.2023

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C.R.M. (DB) No. 201 of 2023

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

And

In Re : Sadhana Saha petitioner

Mr. Sourav Chatterjee

Mr. Avik Ghatak

Ms. Sabnam De

Mr. Sagnik Mukherjee

Ms. Namrata Chatterjee

..... for the petitioner

Mr. Sekhar Kumar Basu, Sr. Adv.

Mr. Kaushik Choudhury

Mr. Sabyasachi Hazra

..... for the opposite party no. 2

Mr. Rudradipta Nandy, learned APP

Ms. Sonali Das

..... for the State

Order dated 26.10.2022 granting bail to opposite party no.
2 has been assailed.

Learned Counsel for the petitioner submits order is a non-speaking one. Learned Judge did not take into consideration the earlier rejection of bail of the petitioner on 08.10.2022. It is also brought to our notice that the bail prayers of co-accused Gobindo Halder, Shib Shankar Sarkar and Subhankar Basak were turned down by this Court on a number of occasions. He prays for cancellation of bail.

Learned Counsel for the State produces the case diary. He submits eye-witness has implicated the petitioner in the murder.

Learned senior Counsel for the opposite party no. 2/accused submits investigation was complete and upon considering the case diary bail had been granted.

We have considered the rival submissions at the Bar. Prosecution case is that on 21.07.2021 husband of the petitioner viz. Manik Chandra Saha had left his residence at around 9:30 P.M. On the next day in the morning his dead body was found lying in front of Taniya Hotel near Gangarampur Bus Stand. In the course of investigation statement of the eye-witness Bikash Sil recorded under Section 164 of the Code of Criminal Procedure which shows opposite party no. 2 and others had assaulted the victim resulting in his death. His ocular version prima facie implicates opposite party no. 2 in the murder. Post mortem report also corroborates the ocular evidence. Considering the aforesaid materials bail prayer of opposite party no. 2 was rejected on 08.10.2022 by the learned Sessions Judge-in-Charge, Dakshin Dinajpur at Balurghat. Within seventeen days, another learned Judge-in-Charge by the impugned order released opposite party no. 2 on bail. While doing so the Judge did not advert to the earlier rejection by the same court.

While considering successive bail applications, judicial propriety demands the Court ought to refer to earlier orders of rejection and indicate the exonerative change in circumstances if it is inclined to release the accused on bail. No such application in mind is evident in the impugned order. On the other hand, order granting bail is a non-speaking one. It does not refer to the

nature of accusation which involves brutal murder and the strength of evidence collected during investigation. It only refers to conclusion of investigation which fact was in existence when the earlier bail application was turned down. Barely two weeks had lapsed since the earlier rejection of bail and such passage of time by no stretch of imagination cannot be considered to be a relevant change in circumstance. The impugned order is not only bereft of reasons but exhibits gross lack of judicial propriety. Failure to advert to the earlier order rejecting bail prayer and not assigning reason reflecting change in circumstances demonstrate the vice of judicial caprice and promote speculative litigation and forum shopping. That apart, bail prayer of the co-accused viz. Gobindo Haldar, Shib Shankar Sarkar and Subhankar Basak who stand on the same footing with opposite party no. 2 has been turned down by this Court.

Under such circumstances, we are of the opinion the impugned order granting bail is wholly perverse and is liable to be set aside.

Bail of the petitioner is cancelled and he is directed to surrender before the trial court within seven days from date failing which the trial court shall issue appropriate process for his apprehension in accordance with law.

Application for cancellation of bail is allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)