

06.06.2023
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C.R.M.(DB) 343 of 2023

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

And

In Re : Nijamul Rahaman @ Nizamul Rahaman petitioner

with

C.R.M.(DB) 614 of 2023

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

And

In Re : The State of West Bengal petitioner

Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar

..... for the petitioner in
CRM (DB) 343 of 2023

Mr. Rudradipta Nandy, learned APP
Mr. Ranadeb Sengupta

..... for the petitioner/State in
CRM (DB) 614 of 2023

Mr. Sekhar Kumar Basu, Sr. Adv.
Dr. R. P. Motilal
Mr. Pabitra Biswas

..... for the opposite party in
both matters

Liberty is granted to correct the cause title in CRM (DB) 343
of 2023.

Order dated 10.01.2023 granting bail to the opposite
party/accused, Mohasin Halder is the subject matter of challenge
in these applications.

Crux of the prosecution case as delineated in the FIR that
on 29.10.2022 around 8:00p.m. one Zakir Hossain and his

nephew were having tea at a tea stall. At that time Asibur Rahaman @ Bachha and 5 to 6 unknown persons came to the shop. They were armed with guns and bombs. They fired at Zakir Hossain who fell down at the spot. They also threw bombs. As a result, Usuf Ali was injured. Thereafter they left the spot. Zakir Hossain was taken to the hospital where he subsequently succumbed to his injuries.

In the course of investigation opposite party/accused, Mohasin Halder was arrested. He was put up for identification and was identified by one Md. Akbar Ali, an eye-witness. On his leading statement fire arms were recovered. Pending investigation by impugned order dated 10.01.2023 learned Judge enlarged him on bail.

Learned Counsel for the State and complainant contend that the learned Judge failed to consider that the opposite party/accused was an unknown assailant. Hence, his name could not have transpired in the FIR or statements of eye-witnesses. But an eye-witness identified him during test identification parade. After being released on bail, opposite party/accused had misused his liberty and FIR was registered under Section 195A of the Indian Penal Code. Hence, bail of the said opposite party/accused may be cancelled.

Learned senior Counsel for the opposite party/accused contends allegations of misuse of liberty are vague and omnibus. He has been enlarged on bail in the subsequent case. Learned

Judge had considered all materials on record and released him on bail. Order of bail does not call for any interference.

From the slant of the submissions made on behalf of the parties it appears that the order granting bail has been assailed on both grounds, namely perversity in the order as well as misuse of liberty by the accused. On the score of perversity it is contended the learned Judge failed to consider relevant materials, namely identification of the accused during test identification parade as well as recoveries of fire arms at his behest. I find merit in such submission. Accused was not a man of the locality. He along with others had come to the spot and shot at Zakir Hossain. Another person namely Usuf Ali was also injured. Md. Akbar Ali is said to be an eye-witness to the incident. He identified the opposite party/accused in the course of test identification parade examination.

We have examined the test identification parade sheet. No objection was raised on behalf of the opposite party/accused with regard to the said examination. It is evident clinching materials disclosing complicity of the opposite party/accused in the crime was ignored by the learned Judge while granting bail.

That apart, it is contended that the accused had misused his liberty.

In view of the aforesaid circumstances, we are of the opinion order granting bail is liable to be set aside. Accordingly, the bail is cancelled and opposite party/accused is directed to surrender forthwith before the jurisdictional court. It shall be

open to the investigating agency as well as the court to take appropriate steps for his apprehension in accordance with law.

Applications for cancellation of bail are, thus, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)