

09.08.2023.
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Ct. No.28
as

C.R.R. 641 of 2020

In the Matter of :Ikbal Hossain @ Abu & Anr.
...Petitioners.

Mr. Amarta Ghosh,
Mr. Sourav Chatterjee,
Mr. Sanat Kr. Das,
Mr. Sujan Chatterjee,
Mr. Sanat Das,
Mr. Souryadeep Ghosh,
Mr. S. Sinha,
Ms. Poulami Chattopadhyay.

...for the petitioners.

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

...for the State.

Petitioners had been arrested in connection with the murder of one Keya Kinnar, a transgender. They were taken into police custody but no fruitful outcome transpired. After detention of 52 days, they approached the learned Additional District & Sessions Judge, Bolpore, Birbhum for bail.

By order dated 8.2.2019, they were released on 'interim bail' on condition petitioner no.1 shall meet the Investigating Officer twice in a week till submission of charge sheet. Petitioner no.2 was directed to assist the Investigating Officer for recovery of the victim as and when called for. Though the order describes the bail as 'interim bail', by the aforesaid order the bail application was disposed of. This gives an impression that the expression 'interim bail' was erroneous and regular

bail had been granted to them. This is further reinforced by the fact the investigating agency subsequently instead of opposing confirmation of bail prayed for cancellation of bail on the ground petitioners had not co-operated with the investigation.

In the cancellation application, prosecution alleged the petitioner no.1 had met the Investigating Officer only between 12.2.2019 to 15.3.2019. Thereafter, he did not meet the officer and informed him by letter dated 19.3.2019 he had been admitted to hospital. Subsequently, the condition of bail was modified and he continued to meet the Investigating Officer once in a week till submission of the charge sheet.

Learned Advocate for the prosecution contends petitioners intentionally did not co-operate with the investigating agency and hindered the progress of investigation. They played an active part in the murder of Keya Kinnar but did not disclose where the dead body had been secreted. In course of investigation, one Aisha Mondal @ Nolakkiner @ Md. Rafshan @ Rafi @ Aysha Mondal was arrested. On 30.11.2019 she made a disclosure statement resulting in the discovery of the place where the body had been secreted. At that stage, presence of the petitioners for verification was of vital importance. But petitioner No.1 pretended to be ill and evade participation in the investigation process. Petitioner no.2 also took similar stance. This hampered the investigation. They also did not disclose the whereabouts of the absconding accused.

Under such circumstances, the Judge by impugned order dated 13.2.2020 cancelled the bail.

We have heard the learned Advocates for the respective parties. Bail was granted to the petitioners on 18.2.2019. Thereafter, on the ground that they had not co-operated with the investigation, the bail came to be cancelled on 13.2.2020. The order has been suspended by this Court till date. In the meantime, investigation is complete and charge sheet has been filed. We are informed further investigation is in progress for apprehension of absconding accused.

We have gone through the materials on record to test the viability of the prosecution plea of non-co-operation by the petitioner in the investigation. Petitioner no.1 was directed to meet the Investigating Officer twice in a week till submission of the charge sheet. He did so till 15.3.2019. Thereafter, he had been admitted in hospital and was unable to meet the Investigating Officer. Nothing is placed on record to show that the admission of the petitioner no.1 in the hospital was an excuse to evade the process of investigation. On the other hand, on 6.4.2019 in the light of his poor health, condition of bail was modified and petitioner no.1 was directed to meet the Investigating Officer once in a week until further orders.

View from this perspective, failure of the petitioner to join the investigation process for cross-verification of facts discovered pursuant to the disclosure statement of an co-

accused cannot be said to be an act of evading the process of investigation.

Learned Advocate for the State has strenuously urged petitioners had not co-operated while in police custody which delayed the investigation. Materials on record show co-accused Aisha Mondal @ Nolakkiner @ Md. Rafshan @ Rafi @ Aysha Mondal identified the place where the dead body had been disposed of. Petitioners had been extensively interrogated during police custody. They remained mum. It is trite, an accused cannot be compelled to self-incriminate himself in view of constitutional safeguard under Article 20(3) of the Constitution of India. Non-disclosure by the petitioners may be a good ground to refuse bail. But once bail is granted, this aspect of the matter cannot be canvassed as a post bail conduct for cancellation.

On the other hand, vital evidence regarding the site whether the body was disposed of transpired through co-accused Aisha Mondal @ Nolakkiner @ Md. Rafshan @ Rafi @ Aysha Mondal. Petitioner no.1 was unable to join the course of verification owing to his ill health. Subsequently, he had made himself available to the investigating agency but was not interrogated on this score. The other aspect of the matter relates to non-availability of co-accused. While the State has actively harped for cancellation of bail of the petitioners to apprehend the absconding accused, coercive process available in law viz., proclamation and attachment have not been issued

against them. It is also relevant to note apart from apprehension of the absconding accused, investigation in the crime is complete and police report has been filed.

In this backdrop, we do not find any justification for the cancellation of bail of the petitioners. Order dated 13.2.2020 is set aside. We, however, direct that the petitioners while on bail shall remain within the jurisdiction of Chinsurah Police Station except for the purpose of attending court proceeding and shall report to the Officer-in-charge, Chinsurah Police Station once in a week until further orders.

Accordingly, the application is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)