

04.05.2023.
35.
Ct.No.28.
as

C.R.M. (DB) 1392 of 2023

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

In the matter of : The State of West Bengal.
... Petitioner.

Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Dipankar Paramanick.
....for the Petitioner.

Mr. Gouranga Kr. Das.
...for the Opp. Party.

Order dated 22.07.2022 granting bail to opposite party has been assailed.

Mr. Madhusudan Sur, learned Additional Public Prosecutor submits petitioner is a member of gang of dacoits who committed dacoity at the house of the de-facto complainant. He has been identified by the de-facto complainant in the T. I. Parade. Stolen property i.e. brass utensils bearing name of the de-facto complainant was recovered from him. His bail prayer was turned down on 30.06.2022. Barely three weeks thereafter, the self-same Court enlarged him on bail without considering the materials and gravity of offence.

Learned Advocate for the opposite party/accused submits bail was granted after considering the case diary. His client has not misused the liberty.

Gravity of offence and strength of evidence collected in course of investigation are relevant considerations for granting

bail. Moreover, when an earlier bail application is rejected, Court while considering the subsequent prayer must advert to the earlier rejection as well as change in circumstances, if bail is granted. None of the aforesaid legal parameters were borne in mind by the learned Judge while granting bail to opposite party/accused.

Offence involved dacoity in the house of the de-facto complainant. He alleged brass utensils, gold and silver articles, cash and mobile phone were stolen. One of the miscreants was unmasked and the defacto-complainant identified the opposite party/accused as the miscreant during T. I. Parade examination. Brass utensil having the name of the de-facto complainant engrossed thereon has also been seized from the opposite party/accused. These overwhelming evidence implicate the opposite party-accused in the crime. His bail was rejected by the self-same Court on 30th June, 2022. Barely three weeks thereafter, without indicating any change in circumstances, the self-same Court released him on bail. Judicial discretion in the grant of bail must be consistent. Otherwise it would lead to arbitrariness and caprice. The impugned order suffers from the aforesaid vitiating factors and cannot survive legal scrutiny.

Under such circumstances, we hold that the order granting bail without adverting to relevant consideration is perverse and liable to be set aside.

Accordingly, the application is disposed of.

Opposite party/accused is directed to surrender within one week before the trial court, failing which the trial court and the

investigating agency shall resort to appropriate processes for his apprehension in accordance with law.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)