

12.04.2023
Sl. No.36
akd
[Rejected]

C. R. M. (DB) 1431 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 05.04.2023 in connection with Rajarhat Police Station Case No.230 of 2022 dated 10.07.2022 under Sections 302/34 of the Indian Penal Code.

And

In Re: ***Bhaskar Biswas***

... .. Petitioner

Mr. Apalak Basu
Mr. Nazir Ahmed
Ms. Snehal Seth
Mr. Samirul Hossain
Ms. Sangamitra Mridha

... .. for the petitioner

Ms. Zareen N. Khan
Ms. Mayukhi Mitra

... .. for the State

It is submitted on behalf of the petitioner that the case has a chequered history. FIR was registered on 07.10.2022 by one Ziarul Islam alleging murder of his mentally challenged brother viz. Yarul Molla by unknown accused. Petitioner and others were arrested in the case. During investigation, bail prayer of some of the co-accused was turned down. In the meantime, the de-facto complainant moved this court under Article 226 of the Constitution of India in WPA 23964 of 2022 alleging that the investigation is done in a partisan manner to screen the real offenders.

A learned single Judge of this court noted the deficiencies in investigation and directed Commissioner of Police, Bidhannagar Police Commissionerate to submit report.

Pursuant to the report the learned Judge noted that sums of money were paid by police to the de-facto complainant and that a vital witness viz. Ranjit Nath had been compelled to make statement under

Section 164 of the Code of Criminal Procedure to implicate the accused.

In the light of the aforesaid facts, by order dated 01.02.2023, the learned Judge directed Criminal Investigation Department (CID), West Bengal to '*to take over investigation and conduct the same afresh*'. By an earlier order the learned Judge also stayed further proceedings on the charge-sheet including framing of charge.

Relying on the aforesaid facts petitioner initially contended that his arrest had stood quashed and he ought to be released on his bond. Such prayer being turned down in CRR 429 of 2023, petitioner prayed for statutory bail.

Learned Advocate for the State submits that the expression '*investigation afresh*' in order dated 01.02.2023 passed in WPA 23964 of 2022 does not mean all steps in the earlier investigation stand quashed. Charge sheet has not been quashed and the petitioner cannot claim statutory bail.

The present case gives rise to a piquant situation. FIR was registered on 10.07.2022. On the same day, petitioner was arrested and remanded to custody. Challenging the fairness in investigation the de-facto complainant had approached this court in WPA 23964 of 2022. A learned single Judge noticed gross irregularities in the investigation particularly payment of money to the de-facto complainant purportedly for humanitarian considerations as well as recording of statement of one Ranjit Nath under coercion.

Noticing the aforesaid circumstances, the learned single Judge directed Criminal Investigation Department (CID), West Bengal to take over investigation and conduct the same afresh. Misconstruing the expression '*investigation afresh*' petitioner contended all prior

investigational activity as well as charge sheet stood quashed and he was entitled to be released on bond unless rearrested.

This proposition was turned down in CRR 429 of 2023. Subsequently, petitioner contends he is entitled to statutory bail as the earlier charge sheet stands dismissed and no fresh charge sheet has been filed. In our estimation, this is also an erroneous assumption on his part.

Analysing the factual matrix and the orders passed by the learned single Judge in WPA 23964 of 2022, it appears the learned Judge had noticed grave irregularities in the investigation. Accordingly, the learned single Judge directed a superior investigating agency to conduct investigation afresh. When investigation is found to be a sham or afflicted with bias, constitutional courts have ample power to direct reinvestigation/fresh investigation through a different/superior investigational agency (see ***Pooja Pal vs. Union of India and Others***¹).

However, such reinvestigation or investigation afresh by a different agency, by no stretch of imagination, would amount to complete effacement of all aspects of prior investigation. If that were so, then a fresh investigation would not be able to rely on untainted relevant materials like post-mortem/forensic reports and other materials collected during earlier investigation that are not clouded with bias or any other vitiating factor.

We have gone through the various orders passed in WPA 23964 of 2022. Earlier charge sheet has neither been quashed nor set aside. Proceedings on the earlier charge sheet has been stayed till conclusion of fresh investigation. Purport of the orders is to ignore the tainted materials collected in course of the earlier investigation. As the

¹ (2016) 3 SCC 135

earlier charge sheet had not been quashed or set aside *qua* the petitioner, it cannot be said that the petitioner is entitled to statutory bail on the score of non-submission of charge sheet.

On merits we note the new investigating agency has collected materials against the petitioner. He has been identified by a witness in course of Test Identification parade.

Hence, we are not inclined to grant bail to the petitioner on this ground also.

The application for bail is thus rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)