

09.01.2023

56
sdas

C.R.M. (DB) No. 2087 of 2022

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

And

In Re : Taslima Sardar petitioner

Mr. Gaganjyot Singh

Mr. Biswajit Mal

Mr. Abhishek Bagal

..... for the petitioner

Mr. Sudip Ghosh

Mr. Bitasok Banerjee

..... for the State

Mr. Debojyoti Deb

Mr. Tamal Ghosh

Mr. Somdyuti Parekh

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

Order dated 06.03.2020 granting bail to the opposite party/accused has been assailed. It is alleged in the F.I.R. that the opposite party/accused had instigated co-accused to fire and throw bombs at the victim. As a result the victim suffered injuries and died. Opposite party/accused was arrested on 6th January, 2020 and enlarged on bail on 6th March, 2020.

Mr. Singh, assailing the order contends the opposite party/accused is the principal accused. Sessions Judge failed to consider his role in the crime and enlarged him on bail after two months. Opposite party had violated the condition of bail and had entered the jurisdiction of Basanti Police Station and committed several crimes. Hence, defacto complainant approached the

Sessions Judge to cancel his bail but such prayer was turned down. Hence, he has approached this Court.

In response, Mr. Deb, submits his client has been falsely implicated due to political rivalry. Co-accuseds who had fired and thrown bombs at the victim are on bail. No prayer for cancellation of their bail has been preferred either by the State or the petitioner/defacto complainant. Bail was granted to his client on condition that he shall not enter the jurisdiction of Basanti Police Station. He has scrupulously complied with the condition. Criminal cases registered against him are false and patently absurd. His client did not misuse his liberty in any manner of bail. He has approached the Hon'ble Apex Court for relaxation of the said condition of bail.

Learned Counsel appearing for the State produces the case diary. He contends while on bail petitioner has been implicated in other cases.

We have considered the materials on record. Bail granted to the petitioner has been assailed on two counts. Firstly, on the count the learned Judge had failed to consider the pre-dominant role of the petitioner in the crime and secondly, due to his post bail conduct i.e. violation of condition of bail and his subsequently involvement in other criminal cases.

With regard to the first issue, we note petitioner is not the principal assailant. It is contended he had exhorted the co-accuseds who had fired and thrown bombs at the victim. The said co-accuseds are on bail. Their bail prayer has not been assailed

either by the State or by the defacto complainant. Learned Judge considering the role of the petitioner in the crime and taking into account that the co-accuseds who had assaulted the victim are on bail extended the same privilege to the petitioner. We do not find any perversity in the order granting bail to him.

With regard to post bail conduct, we note petitioner was saddled with the condition not to enter the jurisdiction of Basanti Police Station. The condition was imposed on him on 06.03.2020. By order dated 20.04.2021 the condition was waived. Petitioner assailed such order before this Court. A learned Single Judge of the Court set aside the waiver and remanded the matter for further consideration by the sessions court. Thereupon, the Sessions Court observing a number of criminal cases had been registered against the petitioner by order dated 19.05.2022 reinstated the condition.

From the report submitted before us we have examined the criminal cases registered against the petitioner. Five of the said cases were registered against him between 27.03.2020 to 10.06.2020. In one of such cases he has been discharged. Gist of the allegations in the aforesaid cases are that the petitioner had threatened the defacto complainant therein when they had gone out of the residence for various purposes. It may not be out of place to note that the FIRs had been lodged at a point of time when the entire nation was under total lockdown. Under such circumstances, it is patently absurd that the defacto complainants in the said case, would have been freely moving in the locality.

We do not express any further opinion on the credibility of the allegations lest the same may affect the fate of the proceedings. Other cases registered against the petitioner were between July, 2021 and August, 2021 when the condition of bail was not subsisting. In these cases the petitioner is on regular bail.

In the light of the aforesaid circumstances, we are unwilling to reverse the finding of the sessions court and cancel the bail of the petitioner on the ground of his post bail conduct.

We do not express any opinion with regard to relaxation of the condition of bail of the petitioner as the matter is pending consideration before the Hon'ble Apex Court.

In the light of the aforesaid, the application for cancellation of bail is, accordingly, disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)