

10.01.2023
tkm/ct 28
sl no. 44

C.R.M. (DB) 3151 of 2022

In Re : An application for cancellation of bail under section 439 (2) read with section 482 of the Code of Criminal Procedure

And

In Re : CBI

..... petitioner

Mr. Kallol Mondal

..... for the petitioner

Mr. Avishek Bhandari

Mr. Dipayan Dan

..... for OP no. 2

Ore dated 5.7.2022 granting bail to opposite party-accused has been assailed by CBI.

Mr. Mondal, learned counsel for the CBI submits bail was granted to opposite party no. 2 on two grounds. Firstly, offences under Explosive Substances Act had not been added in the charge sheet. Secondly, principal accused Tuntun Chowdhury was on bail. He contends supplementary charge sheet has been filed under section 3/4 of the Explosive Substances Act and section 9B of the Indian Explosives Act. Bail granted to Tuntun Chowdhury has been cancelled by this Court in CRM (DB) 14 of 2022. Accordingly, bail of opposite party-accused may also be cancelled.

Learned counsel for the opposite party submits his client does not stand on the same footing with Tuntun Chowdhury. No overt act is attributed to him. He was in custody for 395 days. He further contends opposite party is residing at Petrapole and did not enter the jurisdiction of Bhatpara P.S while on bail. Inadvertently, he had failed to intimate his present address to I.C, Bhatpara P.S which he has subsequently done.

We have examined the materials on record in the light of the role of opposite party in the crime. Statements of witnesses do not show there was any dispute between the opposite party and the deceased or his family members. Prosecution witnesses also do not attribute any overt act to the opposite party. Though witnesses stated opposite party was present at the place of occurrence with the principal accused Tuntun Chowdhury who threw bombs, it cannot be said the opposite party stands on the same footing with the principal accused Tuntun Chowdhury whose bail had been cancelled. Whether opposite party shared common intention to murder the deceased may be assessed during trial. He was in custody for 395 days. One of the co-accused is yet to be arrested and matter has not yet been committed to the court of sessions. Possibility of conclusion of trial in near future is bleak. Materials on record show opposite party has substantially complied with conditions of bail. He is residing outside Bhatpara P.S. Due to inadvertence, there was some delay in intimating his present address to the Inspector-in-Charge of the said police station which does not appear to be willful.

In this factual backdrop we are of the opinion bail granted to opposite party particularly in view of the extent of his role in the crime does not require to be cancelled.

Opposite party shall continue to remain on bail already granted on further condition i.e. he shall not enter the jurisdiction of Bhatpara P.S and report to the Officer-in-Charge of the police station concerned within whose jurisdiction he is presently residing

once in a week until further orders. He shall not intimidate witnesses or tamper with evidence in any manner whatsoever. He shall appear before the court below on every date of hearing without fail.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

With the aforesaid directions, application being CRM (DB) 3151 of 2022 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)