

04.04.2023
tkm/ct 28

C.R.M. (DB) 3168 of 2022
with
CRAN 1 OF 2022

sl no. 47

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 : Minati Das & Anr. petitioners

Mr. Pradipta Nath
..... for the petitioners

Mr. Ranabir Roy Chowdhury
Mr. Sandip Chakraborty
..... for the State

Mr. Amajit De
Mr. S Rathi
Mr. Pratik Acharjee
..... for the OP nos. 2 to 5

Orders dated 25.3.2022 and 20.5.2022 granting bail to
opposite party nos. 2 to 5 have been assailed. Though the
petitioners could not have assailed two orders in the present
application, in view of the consent of the parties irregularity is
condoned and the matter is taken up for hearing on merits.

Learned lawyer for the petitioners submits the learned Judge
failed to consider gravity of the crime. Victim was a lady who had
been brutally murdered. Learned Judge granted bail mechanically
without recording reasons. Opposite party nos. 2 to 5 are
dangerous persons and are threatening witnesses. On 28.9.2022
petitioner no. 1 was threatened by the opposite parties in Durgapur
Court. A separate case has been registered. Opposite party no. 3
has been implicated in another murder case and is in custody in

the said case. Hence, the bail orders be cancelled and opposite parties be committed to custody.

Mr. De for opposite party nos. 2 to 5 denies and disputes the allegations. He submits that the learned Judge after considering the case diary and evidence on record granted bail to his clients. Order reflects application of mind and adverts to the factual matrix of the case. Allegations of misuse of liberty are out and out false. Opposite parties have been granted bail in the subsequent case. With regard opposite party no. 3 he submits that he has voluntarily appeared and has been taken into custody in the subsequent murder case registered against him.

Learned lawyer for the State submits that the orders granting bail are well reasoned one but conditions may be imposed on opposite party nos. 2 to 5 in view of the subsequent criminal cases registered against them.

Orders granting bail to opposite party nos. 2 to 5 have been assailed on twin grounds.

Firstly, it is contended that the orders are cryptic and non-speaking nature. In **Sonu vs. Sonu Yadav & Anr.**¹ the Apex Court deprecated the practice of passing cryptic unreasoned orders while granting bail. It held as follows:-

“11. In the earlier part of this judgment, we have extracted the lone sentence in the order of the High Court which is intended to display some semblance of reasoning for justifying the grant of bail. The sentence which we have extracted earlier contains an omnibus amalgam of (i) “the entire facts and circumstances of the case”; (ii) “submissions of learned Counsel for the parties”; (iii) “the nature of offence”; (iv) “evidence”; and (v) “complicity of accused”. This is

¹ 2021 SCC OnLine SC 286

followed by an observation that the “applicant has made out a case for bail”, “without expressing any opinion on the merits of the case”. This does not constitute the kind of reasoning which is expected of a judicial order. ... An order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application of mind by the judge who is deciding an application under Section 439 of the CrPC must emerge from the quality of the reasoning which is embodied in the order granting bail. While the reasons may be brief, it is the quality of the reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained judicial mind. We are constrained to make these observations because the reasons indicated in the judgment of the High Court in this case are becoming increasingly familiar in matters which come to this Court. It is time that such a practice is discontinued and that the reasons in support of orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice”

(emphasis supplied)

We have tested the bail orders in the light of the aforesaid observations. While granting bail, learned Sessions Judge looked into the case diary and materials on record. He was not persuaded to grant bail merely on the ground that the Public Prosecutor had not objected to the bail prayer. He considered nature of accusations as well as the quality of evidence collected against opposite party nos. 2 to 5 herein. He noted the case was based on circumstantial evidence. The most vital circumstance, namely, ‘last seen together’ hinges on the statement of a single witness. He also noted no forensic report with regard to seized articles had been collected during investigation to establish that they were used as weapons of offence. It cannot be said that the bail orders are laconic in nature. An order granting bail must disclose reasons indicating the contours of judicial discretion but elaborate evaluation of evidence and final conclusions thereon ought to be eschewed lest the

subsequent trial is prejudiced. In this backdrop, we are of the opinion the orders granting bail to opposite party nos. 2 to 5 do not suffer from the vice of lack of reasons.

Secondly, bail granted to opposite party nos. 2 to 5 have been assailed on the ground of misuse of liberty. It is alleged on 28.9.2022 petitioner no. 1 was threatened in Durgapur court. It is also submitted opposite party nos. 2 to 5 are dangerous persons and one of them i.e. opposite party no. 3 has been booked in another murder case.

Learned lawyer for opposite party nos. 2 to 5 vehemently denies and disputes the truthfulness of the accusations levelled against them.

We have considered the rival submissions in the light of the materials on record. It is true a separate case alleging criminal intimidation has been registered against opposite party nos. 2 to 5. But they have been enlarged on bail in the said case. Mere registration of FIR is no proof of truthfulness of the accusation. Correctness of the allegations in the subsequent case would be gone into in the course of trial of the said case. That apart, involvement of opposite party no. 3 in another case of murder is also the subject matter of investigation in the said case. It has no relation with the present case. It may be relevant to note opposite party no. 3 had already surrendered and has been taken into custody in the said case.

Under such circumstances, we are of the opinion though materials on record may give rise to some suspicion with regard to

misuse of liberty on the part of opposite party nos. 2 to 5 herein, the said materials are not of such weighty nature that their liberty requires to be fortified. On the contrary, apprehension of the petitioners and their witnesses that their lives and properties would be at stake, may be addressed by imposing appropriate restrictions on the movement of opposite party nos. 2 to 5 herein.

Accordingly, we dispose of the application for cancellation of bail by directing that the opposite party nos. 2 to 5 herein while on bail shall not enter the district of Paschim Bardhaman until further orders except for the purpose of attending court proceeding and they shall provide the address where they shall reside to the Investigating Officer as well as to the court below. They shall report to the Officer-in-Charge of the police station concerned within whose jurisdiction they shall presently reside once in a week until further orders. They shall not intimidate witnesses or tamper with evidence in any manner whatsoever. They shall appear before the trial court on every date of hearing and shall not seek unnecessary adjournment or delay the proceeding in any manner whatsoever.

In the event they fail to comply with the aforesaid conditions, it shall be open to the petitioners to seek cancellation of bail before the trial court in accordance with law if so advised.

Re : CRAN 1 of 2022

Petitioners have sought for transfer of the proceeding from the Court of Additional Sessions Judge, Durgapur to the Asansol District Court.

Such prayer cannot be pressed as an interlocutory relief in the proceeding for cancellation of bail.

Hence, application being CRAN 1 of 2022 is disposed of as not maintainable.

It is open to the petitioners to institute appropriate proceeding for such relief in accordance with law, if so advised.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)