

16.01.2023
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C.R.M. (DB) 4061 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with CBI, SPE, SCB, Kolkata Case No. RC056022S008 (RC-8/S/2022) dated 6.4.2022 under Sections 120B/34/302 of the IPC

And

In Re : Dipak Kandu

..... petitioner

Mr. Milon Mukherjee, Sr. Adv.
Mr. Kunal Ganguly
Md. Abdur Rakib

.... for the petitioner

Mr. Dhiraj Trivedi, Id. A.S.G.
Mr. Amajit De
Mr. Subrata Santra

.... for the CBI

Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar

.... for the de facto complainant

Mr. Mukherjee, learned senior counsel for the petitioner argues there is no legally admissible evidence adduced to implicate his client. In fact the assailants have not been properly identified by witnesses. CCTV footage which was shown to PW1 during investigation has not been produced in court. With regard to telephonic conversations between accuseds, he submits the evidence is inconclusive. No telephonic conversation between the petitioner and other co-accuseds (apart from his father) is brought on record. Withdrawals of cash were made by the petitioner in February 2022 cannot relate to the present conspiracy. Supplementary charge sheet has been filed implicating other co-accuseds. More than 100 witnesses are proposed to be examined during trial. There is little possibility of trial concluding in the near future. Accordingly, he prays for bail.

Mr. Trivedi, learned Deputy Solicitor General with Mr. De for CBI submits petitioner and his father are the prime conspirators. Stunned by an unexpected defeat in the municipal election whose results were declared on 2.2.2022, petitioner and his father Naren Kandu hatched a conspiracy with others to eliminate Tapan Kandu to ensure re-election. Telephonic conversations between the father of the petitioner and other co-accuseds would corroborate such fact. Pursuant to the conspiracy, monies were withdrawn from the bank by the petitioner on 3rd March 2022 and 7th March 2022 respectively. On 12th March 2022 money was handed over to Kaleber Singh and the victim was shot dead. On the next day PW1 identified Kalebar as one of the assailants. Other witnesses have identified co-accuseds in the course of TI parade. Trial is in progress. A vital witness namely Abhishek Das who heard conversations between the petitioner and his supporters regarding re-election on the elimination of Tapan Kandu is yet to be examined. Release of the petitioner on bail at this stage may have adverse impact on the trial.

Mr. Bagchi for the defacto complainant opposes the bail prayer and submits there are ample evidence implicating the petitioner, his father and other accuseds in the crime. He further submits petitioner is an influential person. A witness namely Niranjana Baishnab was found dead under mysterious circumstance. There is possibility of other witnesses turning hostile or disappearing if the petitioner is released on bail.

We have considered the materials on record. Municipal election to Jhalda municipality was held on 27th February 2022.

Petitioner and the deceased Tapan Kandu contested for ward no. 2. Though the petitioner was sure of victory, Tapan was elected. Results were declared on 2nd March 2022. On that day a conspiracy was hatched between the petitioner, his father and other co-accuseds. CDRs between the petitioner's father and co-accuseds viz. Satyaban Pramanik, Md. Asiq and Kaleber Singh (one of the assailants) corroborate the aforesaid circumstance. Further it is the prosecution case monies to the tune of Rs. 2 lakhs and Rs. 4 lakhs were withdrawn by the petitioner on 3rd March 2022 and 7th March 2022 respectively to pay Kalebar to commit the offence. On or about the same time one Abhishek Das heard the petitioner enquiring whether re-election will be held in the ward if Tapan was eliminated. One day prior to the incident i.e. 12th March 2022 a number of telephonic conversations were made between the co-accuseds namely Satyaban Pramanik, Md Asiq, Kaleber Singh and Naren Kandu as per CDRs collected during investigation. This probabilises the prosecution case that money was handed over to Kalebar Singh on that day. On the next day three miscreants riding on a motor cycle murdered Tapan Kandu while he was returning from evening walk. One of his companions PW1 has been examined. He identified Kalebar as one of the miscreants.

Mr. Mukherjee contends CCTV footage that was shown to PW1 during investigation for the purpose of identification of Kalebar has not been produced in court. It is trite law identification in court is substantive evidence. Hence, non-production of CCTV footage would not erode the identification in court.

In view of the aforesaid materials on record we are of the opinion there are convincing materials of substance giving rise to a reasonable inference of conspiracy between the petitioner, his father and other accuseds including one of the assailants namely Kalebar Singh to murder Tapan Kandu.

Mr. Mukherjee contends his client is in custody for more than eight months and there is little possibility of trial concluding in the near future. He also submits prosecution evidence is primarily based on documents, namely, CDRs and bank details and there is little possibility of tampering such evidence.

We have given anxious considerations to the aforesaid submission. The prosecution case involves a deep-rooted conspiracy between the petitioner and others to eliminate his political opponents. He is the primary beneficiary of the conspiracy. As discussed above ample materials implicating him in the crime has been collected. Though petitioner is in custody for eight months it cannot be said that the trial is progressing at a slow pace. 15 witnesses have already been examined. A vital witness with regard to conspiracy is yet to be examined. Other witnesses who have identified the assailants in the course of TI parade are also to be examined. Release of the petitioner before the examination of the said witnesses may have adverse impact on the prosecution case.

Under such circumstances bearing in mind the gravity of offence and prima facie involvement of the petitioner therein and the fact that vulnerable witnesses to the conspiracy and/or

unfolding of the prosecution case are yet to be examined, we are not inclined to release the petitioner on bail at present.

We note that the prosecution proposes to examine a large number of witnesses. We request the prosecution to review the matter and ensure streamlining of witnesses so that examination of prosecution witnesses may be concluded at an early date. Prosecution ought to bear in mind that it is quality and not quantity of evidence which is material. We request the trial court to conclude the trial at an early date preferably within one year from the next date fixed for recording evidence without granting unnecessary adjournments to either of the parties. All parties are requested to co-operate with the trial court in the matter.

Observations made by us are for the purpose of disposal of this application and shall not have any bearing at the subsequent stage of the proceeding which needless to mention shall be decided independently and in accordance with law.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)