

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

Present :

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Raja Basu Chowdhury

CRM (A) 361 of 2023

Manomoy Sarkar @ Monomay Sarkar

Vs.

State of West Bengal

With

CRM (A) 281 of 2023

Saikat Chatterjee

Vs.

State of West Bengal

For the petitioner
In CRM(A) 361 of 2023

: Mr. Milan Mukherjee, Senior Adv.,
Mr. Aniruddha Bhattacharjee, Adv.
Mr. Bhaskar Roy Mahashaya, Adv.
Mr. Sannidhya Dutta, Adv.

For the petitioner
In CRM(A) 281 of 2023

: Mr. Kishore Dutta, Senior Adv.,
Mr. Shouvik Mitter, Adv.,
Mr. Ranadeb Sengupta, Adv.,
Mr. Debasish Mukhopadhyay, Adv.,
Mr. Sandip Dutta, Adv.,
Mr. Anirban Banerjee, Adv.,
Mr. Swarup Mondal, Adv.,
Mr. Tapabrata Ghosh, Adv.,

For the de facto complainant

: Mr. Kallol Mondal, Adv.,
Mr. Krishan Ray, Adv.,
Mr. Ananta Deb Adhikary, Adv.,
Mr. Asish Roy, Adv.,
Mr. Sanjit Singh, Adv.,
Mr. Arijit Ghosh, Adv.,
Mr. Gobinda Ghosh, Adv.,

For the State

: Mr. Aditi Shankar Chakraborty, Ld.APP
Mr. Sourav Ganguly, Adv.

Hearing concluded on

: 12th June, 2023

Judgment on : 16th June, 2023

The Court:

1. The petitioners have filed the applications for anticipatory bail under Section 438 of the Cr.P.C.in connection with Kotwali Police Station Case No. 237 of 2023, dated 02.04.2023 under Sections 306/34 of the Indian Penal Code, 1860 corresponding to GR Case no. 1546 of 223.

2. Both the applicants have been named in the FIR following a suicide note dated 31.03.2023 of Aparna Bhattacharjee and Subodh Bhattacharjee (hereinafter referred to as “the deceased couple”) implicating the present petitioners along with Sandip Ghosh and Sonali Biswas.

3. In view of the fact that both the persons have been named in the suicide note and FIR, the applications were heard analogously.

4. On 8th May 2023 in an application filed by Saikat Chatterjee a Coordinate Bench directed filing of affidavits by the State in order to assess the nature and gravity of the offence for the purpose of granting anticipatory bail. However, protective order was passed in favour of Saikat Chatterjee to the effect that he shall not be arrested except with the leave of this Court and such leave may be obtained by the State of West Bengal or any other Investigating Agency if such right is vested in it.

5. The last limb of the direction was in view of a writ petition filed by the daughter of the victim for enquiry by the CBI. Till these matters were

heard, the State has not filed any application disclosing the need to arrest Saikat Chatterjee.

6. In the writ proceeding, an order was passed on 19.05.2023 directing Mr. K.Jayraman, IPS, ADG, West Bengal to carefully supervise and oversee the investigation in Kotwali Police Station Case No. 237 of 2023, dated 02.04.2023 under Sections 306/34 of the Indian Penal Code. The investigation is still in progress.

7. Mr. Kishore Dutta, learned Senior Advocate representing the petitioner Saikat Chatterjee has submitted that Saikat has been falsely implicated and the authenticity of the suicide note is doubtful. In the suicide note it was alleged that on a false allegation that the deceased couple had taken a sum of Rs.20,00,00/- from different persons with a promise to give jobs, the four accused persons, including Saikat had started blackmailing the petitioners and created pressure upon the petitioners to hand over the title deed of their house, six undated blank cheques and an agreement signed by them. It was further alleged that these four persons have misrepresented the fact to the in law of their daughter in order to tarnish the image and reputation of the deceased couple and to create marital discord. This misrepresentation has marital discord and resulted in a divorce of the daughter of the deceased.

8. The suicide note suggests that the genesis of the dispute between the parties had started in 2017 when Subodh, the husband of Aparna was a member of CWC. H claimed to have disclosed the incidents of child trafficking to Kakoli Ghosh Kundu, Inspector, CID which had resulted a

charge sheet being filed against 7 accused persons, which, inter alia include Chandana Chakraborty but left the four accused persons Saikat, Sandip, Sonali and Monomoy continued with their acts of child trafficking. Although their names were disclosed to the then Investigating Officer of the CID, Monotosh Sakar, the said Investigating Officer did not take any steps as he was a relative of Sonali Biswas and the name of Saikat and Monomoy were not deliberately included in the charge sheet.

9. Mr. Dutta has submitted that there is nothing on record to show that the deceased, since 2017 till date of suicide, had made any attempt to lodge a complaint against the said persons for being involved in child trafficking. The reason for committing suicide is not for the involvement of Saikat in child trafficking. Moreover no document or cheques has been seized from Saikat by the police authorities. The learned Senior Advocate has emphatically submitted that the fact that the title deed, six signed undated blank cheques and one agreement on a non-judicial stamp paper alleged to have been kept in the custody of Saikat as claimed in the suicide note was not substantiated and could not be established as the seizure list does not show recovery of any such document from the custody of Saikat. The involvement of Saikat in the commission of the alleged offence is not at all established.

10. It is submitted that on 19.09.2022, that is, eight month prior to the alleged suicide, Smt. Sonali Biswas lodged a written complaint against the deceased couple and their daughter, Tania Bhattacharjee, stating that in the year 2013 when Aparna was the Vice Chairman of Jalpaiguri

Municipality, at that time, Aparna and her husband took an amount of Rs.5,60,000/- from Sonali Biswas with a false assurance that her husband would get a job for her in the Jalpaiguri Municipality as an accountant. They could not secured a job for her. They have cheated Sonali and her husband. They had refused to return the money and threatened to implicate in false criminal cases if they continued to demand such money.

11. Subsequently, on 04.04.2023, Monomay Sarkar had lodged a complaint against the complainant, i.e., Sikha Chatterjee, stating that the deceased Aparna, Subodh and Sikha had assured him of a job in consideration for a sum of Rs.15,45,000/- and on the basis of such assurance the said amount was handed over to the deceased couple in presence of Sikha. At the relevant time Aparna was the Vice Chairman of the Jalpaiguri Municipality.

12. A written complaint was lodged against Sikha in Kotwali Police Station on 4.4.2023. Very recently on 4.12.2022 the daughter of the deceased was married with one Sailesh. The marital life of Tania and Sailesh were not smooth and on 4th March, 2023 the daughter of the deceased and/her husband filed a matrimonial divorce suit and for that reason the deceased persons were upset. Moreover, the deceased persons were in huge debt and liability which may have played a vital role in the decision of committing suicide.

13. It is submitted that on 15.04.2023, Tania made a complaint with the S.P., Jalpaiguri stating that Saikat and others went to her neighbour's

house and threatened her that his name should not appear in the statements to be recorded under Section 164 of the Cr.P.C., an afterthought as because the statement was recorded by the Magistrate on 10.04.2023 but the complaint has been made to the S.P., Jalpaiguri on 15.04.2023, that is, after a lapse of 5 days. Similar statement by Sweta Gautam, daughter of Uttam Kumar Gautam, alleging being threatened by Saikat and his associates not to disclose their name, is equally false and motivated and an afterthought.

14. Mr. Dutta has further submitted that in terms of the order dated 19th May, 2023 in WPA 1084 of 2023 passed by the Hon'ble Justice Rajasekher Mantha, Saikat has cooperated with the investigation and there is no possibility of Saikat absconding or tampering with the evidence. It is further submitted that the application for anticipatory bail may be allowed with any condition that the Court may feel deem fit and proper.

15. Mr. Milan Mukherjee, learned Senior Advocate appearing on behalf of Monomay Sarkar submits that the vital dates in FIR is kept blank namely the date of occurrence of the offence. It is stated that there is no material on record against the petitioner which attracts Sections 306 and Section 107 of the IPC as there is no abetment from the side of the accused person in commission of the alleged offence under Section 306 of the IPC. It is submitted that there is no material to suggest that Monomoy had instigated the deceased or had intentionally aided the

doing of the thing. There has to be an element of “intentional aiding” in commission of the crime.

16. Monomoy was apprehended merely on the basis of certain statements alleged to have been made by the deceased, the truth and veracity of which are required to be decided and cannot be considered to be a gospel truth. During the lifetime of the deceased persons they did not lodge any complaint against Monomoy alleging extortion or blackmailing. It is submitted that Monomoy has a permanent place of residence and there was no possibility of him absconding. The complaint has been made out of political vengeance.

17. It is further submitted that in the forwarding report, S.I., Sibbu Kar had stated that from the statements of witnesses recorded under Sections 161 and 164 of the Cr.P.C., it is learnt that the accused persons along with Saikat were directly involved with the charge of offence of abetment to suicide by the deceased persons since 2000, but, surprisingly during their lifetime, the deceased persons did not make any complaint. Mr. Mukherjee has submitted that in the facts and circumstances of the case custodial interrogation of the petition is not necessary.

18. The learned Additional Public Prosecutor in opposing the prayer for anticipatory bail has submitted that both Saikat and Monomoy are directly implicated by the deceased couple in their suicide note. The daughter of the deceased and Sweta Gautam although did not mention the name of Saikat in the statement recorded under Section 164 of

Cr.P.C but later on they have lodged a complaint that Saikat had threatened them not to disclose his name in the statement to be recorded under Section 164 of Cr.P.C. The complaint also disclosed the name of Saikat and Monomoy as the persons responsible for the suicide. Sonali is already in custody. However, it is submitted that nothing was recovered from Saikat and Monomoy. It is further submitted that some of the independent witnesses in their statement recorded under Section 161 of the Cr.P.C. however, did not implicate Saikat and Monomoy.

19. Mr. Kallol Mondal, learned Advocate representing the de-facto complainant submits that the suicide note clearly implicates Saikat and Monomoy as accused persons who have abetted suicide and at this stage the statement made in the suicide note has to be taken as true and correct. It is submitted that although the seizure list shows nothing had been recovered from Saikat or Monomoy but surprisingly Monomoy in his complaint dated 03.04.2023 has clearly stated that Aparna, Subodh and Sikha had assured Monomoy and one of his close relatives Shampa of a Government job and in consideration for such job they have paid a sum of Rs.15,45,000/- in installments. The deceased couple however, had failed to ensure the job for him and his relative and whenever they have demanded return of the money, they were threatened with initiation of false case against them. In 2016, Subodh exercised his influence as a member of the CWC and threatened to implicate Monomoy with false case of child trafficking. Subsequently, on 19.09.2022 the deceased couple had mortgaged their residential property and thereafter deposited

Rs.5,60,000/- and towards the end of January, 2023, Aparna handed over few cheques with a request to deposit the said cheques after two months in view of their failure to secure job for Monomoy and his relative. The narrative in the said complaint would make it clear that the said complaint was antedated and the investigation authorities have connived with Saikat and Monomoy to cause destruction of evidence and manipulation of the record.

20. It is further submitted that on 03.10.2022, Aparna lodged a complaint with Sri Debasish Dutta, S.P., Jalpaiguri alleging threat by Saikat, who is the Vice-Chairman of Jalpaiguri Municipality in which it was alleged that he is threatening the deceased couple with dire consequences, if a sum of Rs.20,00,000/- is not paid to them. Mr. Mandal submits that merely because Saikat may have been cooperating with the investigation, that by itself does not mean that custodial interrogation is not required or necessitated. The mere fact that custodial interrogation is not required or necessitated, cannot be a ground to allow the application for anticipatory bail as has been recently held by the Supreme Court in the case of Sumitha Pradeep Vs. Arun Kumar CK and Anr. Reported at 2022 SCC Online SC 1529. It is further submitted that the suicide note clearly shows that the persons named in the suicide note have instigated the petitioners to commit suicide as they were constantly threatening the petitioners with initiation of false case and to tarnish their image and reputation. In this regard Mr. Mondal has relied upon a decision of the Hon'ble Supreme Court reported in Chitresh

Kumar Chopra v. State (Government of NCT of Delhi) reported at 2009 (16) SCC 605 (Paragraphs 15 to 24). Mr. Mondal has emphatically submitted that having regard to the gravity of the offence both the applications are required to be dismissed.

21. In view of production of the letter dated 03.10.2022 addressed to S.P., Jalpaiguri by Aparna, we have asked the learned A.P.P to inform whether the said letter was received by the Superintendent of Police, Jalpaiguri on 03.10.2022. In response to the original query, it has been clearly submitted that the signature appearing on the said letter just above the official seal of Superintendent of Police, Jalpaiguri is that of Sri Deborshi Dutta the then Superintendent of Police, Jalpaiguri. However, the said letter is not available with the C.D. and on a further query as to steps if any taken pursuant to such complaint it has been submitted that no investigation till date has been initiated.

22. We are considering the application for anticipatory bail of two persons who appeared to be influential and one of them holding a responsible position in the Municipality. At the stage of considering an application for anticipatory bail, the Court is required to assess the nature of involvement of the petitioners in the commission of the alleged offence, the gravity of the offence, possibility of intimidation of the witnesses and tampering with the evidence and the likelihood of the investigation being influenced by the persons named in the FIR.

23. With a view to find out whether the suicide note was written by the deceased couple the original forensic report along with the suicide note

was produced before us, wherefrom the signature of one of the deceased, namely, Subodh was found to be matching with the admitted signature of Subodh. Prima facie, the suicide note appears to have been in the handwriting of the deceased couple.

24. Taking away one's life cannot be taken lightly. Life is precious for all. The human body is the temple of God. Life is required to be spent well with love, affection and happiness all around. The journey of life has ended abruptly in this case by self infliction. It is not a voluntary act. No one would like to take his own life unless there are compelling reasons. In the instant case four persons have been made responsible for the death. Whether Saikat and Monomoy had intentionally aided the commission of the crime is a matter to be considered and dealt with at the appropriate stage of trial.

25. One cannot disregard that Saikat and Monomoy are named in the suicide note by the deceased couple along with few others and some are already in custody. The said suicide note was preceded by a complaint of threat against Saikat on 03.10.2022 which was conveniently not found in the CD and there is no explanation offered for not investigating into the complaint made by Aparna on 03.10.22 much prior to the suicide note. The chain of events thereafter ending with the suicide note would prima facie show the involvement of Saikat and Monomoy. The act of the police authority in showing no recovery in the seizure list from Saikat and Monomoy is a matter which cannot be lightly ignored particularly in view of the fact that Monomoy in his complaint dated 03.04.2023 had

acknowledged that the properties of the deceased couple and cheques handed over to him in between September, 2022 and January, 2023 along with an agreement but surprisingly not recovered from Monomoy.

26. It also raises grave doubt in the mind of the court as to whether the said complaint of Monomoy was antedated and brought into existence in order to nullify the contents of the suicide note which could only be ascertained through a proper and fair investigation. In fact, Mr. K. Jairaman, IPS, ADG Head Quarter, West Bengal appointed by Justice Rajashekhar Mantha in WPA No. 1084 of 2023 in his report dated 31.05.2023 had suggested the change of IO and to examine few witnesses and to record their statement. The IO was also directed to again examine the relevant witnesses to clear out how the sale deed and the blank cheques of the victim went to the possession of the accused persons. The IO was also directed to investigate the actual circumstances leading to seizure of the property document as the inmates of the house alleged that such document was neither available nor was seized from the victims house as noted in the seizure list.

27. Having regard to the material available in the case diary and the statement in the suicide note clearly implicating Saikat and Monomoy and having regard to the statements of the daughter and niece of the deceased couple and subsequent complaint of the daughter that they have been threatened by Saikat not to mention his name in the statement to be recorded under Section 164 Cr.P.C, the admission of Monomoy to be in possession of all the documents mentioned in the

suicide note but strangely not mentioned in the seizure list, in action on the part of the investigating authorities is not initiating any investigation pursuant to the complaint dated 3rd October, 2022 and that the investigation is not yet complete, for a fair and proper investigation, we are not inclined to grant anticipatory bail to the petitioners.

28. The application for anticipatory bail stand rejected.

29. The original case diary and the original suicide note along with the certified copies of handwriting expert report received from Questioned Document Examination Bureau, CID, West Bengal are returned to the learned APP.

(Soumen Sen, J.)

(Raja Basu Chowdhury, J.)

Later:

Learned Counsel appearing on behalf of Saikat Chatterjee has prayed for stay of operation of the judgment, the same is considered and rejected.

(Soumen Sen, J.)

(Raja Basu Chowdhury, J.)