

03.09.2024
Court No.29
Item No. 158

sg

CRM (DB) 997 of 2024

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

And

In Re: **Emdad Hossain Ostagar**

Petitioner

Mr. Debajyoti Deb
Miss. Somdyuti Parekh

For the petitioner

Mr. Atif Ahmed Siddiqui

For the State

1. The affidavit of service filed in Court is taken on record.
2. In spite of service, the opposite party no.2 is not represented.
3. The learned Counsel for the petitioner submits that by an unreasoned and cryptic order, the opposite party no.2 was granted anticipatory bail by the Sessions Judge-in-Charge, South 24 Parganas at Alipore on 19th February, 2024.
4. The learned Counsel for the State has produced the case diary and has referred to the statement of one of the independent eyewitnesses and also the postmortem report to show that the opposite party no.2 was involved in hurling bombs that had caused the death of the deceased.
5. Ordinarily, the Court may not interfere with the order granting anticipatory bail unless there is violation of the bail conditions. However, this does not preclude the Court deciding an application for cancellation of bail to take into consideration all relevant circumstances which ought to be evident and should

have been taken in deciding an application for anticipatory bail. If the Court deciding the application for cancellation of bail, comes of a prima facie finding that the anticipatory bail ought not to have been granted if the materials available in the case diary prima facie discloses an offence and implicates the accused persons and there are materials suggesting their involvement of the commission of alleged offence, then it would be appropriate and proper to cancel the bail.

6. In the instance case as observed earlier, there are enough materials which implicates the petitioner. In fact the statement of the eyewitnesses recorded under Section 164 of the Code of Criminal Procedure prima facie shows that the opposite parties no.2 along with five others, on the day of the election threw bombs and some of the bombs have been hurled towards the deceased and the postmortem report suggests that the death was caused due to such bomb injury, we are of the view that the opposite party no.2 is not entitled to anticipatory bail.
7. On such consideration, the prayer for cancellation of bail is allowed. The order dated 19th February, 2024 is set aside.
8. The other requirement before cancellation is that a copy of the notice has been served upon the accused or accused is to be heard. In view of the fact that the accused, in spite of service, has failed to appear, we have decided to hear the application in absence of the accused and consider the matter on the basis of the materials available in the case diary.
9. The learned Register Administration (L&OM) is directed to communicate this order to the learned Sessions Judge, Alipore, South 24 Parganas, for information.

10. The Hon'ble Supreme Court has discussed the duty of the appellate court or a superior Court in interfering with an order granting anticipatory bail and allowing an application for cancellation of bail as follows:

“It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has not relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

The aforesaid view has been reiterated in Supreme Bhiwandi Wada Manor Infrastructure Private Limited v. State of Maharashtra.”

11. CRM(DB) 997 of 2024 is thus disposed of with the aforesaid direction.

(Soumen Sen, J.)

(Shampa Dutt (Paul), J.)