

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 3417 of 2022

**Anuj Sharma
Vs.
The State of West Bengal & anr**

For the petitioner : Ms. Manjit Singh
Mr. Biswajit Mal
Mr. Arkaprabho Roy
Mr. Soujanya Pattanayak
Mr. Palash Mukherjee

For the state . Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick

Heard On 12.09.2024

Judgment on : 18.09.2024

Ajoy Kumar Mukherjee, J.

1. This application has been preferred challenging the order dated 22nd August, 2022, by which the court below rejected the petitioner's prayer for discharge filed under section 227 of the Code of Criminal Procedure in S.T No. 108 of 2021.

2. The petitioner has been arraigned as accused person in connection with Belur P.S. case no. 1 of 2020 dated 01.01.2020 under section 302/

120B/ 34 of the IPC. The FIR discloses that on 31.12.2019 at about 23.00 hrs some miscreants had attacked some of the neighbours of the complainant in front of the gate of Rajendra Ispat Udyag. The complainant and his nephew allegedly rushed to the spot and tried to stop them but the miscreants suddenly started to beat them with bricks and stones and accordingly they became senseless and later on the nephew of the complainant died whom the miscreants hit on his head with a solid barrier of cement. In the FIR complaint mentioned the name of 16 accused persons including the present petitioner. After completion of investigation police submitted charge sheet against all the 16 accused persons including the present petitioner under sections 302/120B/34 of the Indian Penal Code.

3. Further contention of complaint is that, since no role of the present petitioner has been ascribed and the witnesses had stated before the investigating officer that petitioner was merely found present at the place of the occurrence and petitioners name did not transpire in the statement of the witnesses recorded under section 164 Cr.P.C, so the petitioner herein has preferred the aforesaid application under section 227 of the Code seeking discharge but learned Trial Court by the order impugned rejected such prayer.

4. Being aggrieved by the said order Mr. Manjit Singh learned counsel appearing on behalf of the petitioner argued that though this High Court earlier rejected petitioner's application for quashing of the said proceeding qua petitioner, but when the petitioner was served copies of materials collected during investigation, he found that no incriminating material is available in the case diary, which can implicate the petitioner either under

section 34 or under section 120 B of the IPC, petitioner made the aforesaid prayer under section 227 of the Code. He further submits that the investigation made by the police authorities clearly reveals that the petitioner had no role in the commission of any offence and at best he was merely onlooker to the commission of the offence. He further pointed out that during investigation police has examined several eye-witnesses, out of them only four witnesses have named the petitioner in their statements recorded under section 161 of the Code. However, none of these four statements ascribed any role to the petitioner in the commission of the offence and they only named him as being present in a crowd of people. Interestingly all these four witnesses were also examined before the magistrate, but none of them have named the petitioner in their statement recorded under section 164 of the Code.

5. Mr. Singh strenuously argued that it is settled law that charges should not be framed until and unless materials placed before the court discloses grave suspicion against the accused. The supreme Court held even in a case, if two view are possible and the judge is satisfied that the evidence produced before him give rise to some suspicions, but not grave suspicions against the accused, the prayer made under section 227 is to be allowed. The court below ought to have considered the broad probabilities of the case, the total effect of the evidence and documents as well as basic infirmities appearing in the case and the court is not supposed to act as a mere post office or mouth piece of the prosecution. Learned counsel appearing on behalf of the State tried to influence the court below by submitting that section 149 of the IPC may attract in the present context,

though no charge sheet has been submitted for any offence allegedly committed by the petitioner under section 149 of the IPC. Accordingly Mr. Singh has prayed for quashing of the said proceeding quo petitioner herein and in this context he relied upon

(a) State Vs. A. Arun Kumar and another reported in **2015 2 SCC 417.**

(b) Sajjan Kumar Vs. CBI reported in **2010 9 SCC 368.**

(c) Bindu and another Vs. State of NCT of Delhi 2019 reported in **SCC Online Delhi 8963.**

(d) Union of India Vs. Prafulla Kumar Shyamal and another reported in **1979 3 SCC 4.**

(e) Chandi Puliya State of West Bengal reported in **2022 SCC Online SC 1710.**

(f) Jasdip Singh Vs. State of Punjab, reported in **2022 2 SCC 545 .**

6. Mr. Madhusudan Sur learned counsel appearing on behalf of the state placed the case diary and he submits that from the averments it is clear that this court earlier rejected petitioners prayer seeking quashment and as such present prayer made by the petitioner on the self same ground is frivolous and an attempt to abuse the process of the court. That apart, the materials collected by the investigating agency during investigation transpires the name of the petitioner and he was not a mere bystander at the place of occurrence. Whether the offence was committed in furtherance of the common intention, and/or whether such murder is an outcome of deep-rooted conspiracy, can only be adjudicated after trial and merely on the basis of suspicion that the petitioner might not be convicted at the end of

trial, is not sufficient ground to discharge the petitioner. Accordingly he submits that the order impugned does not call for interference.

7. Opposite party no.2 is not represented.

8. I have considered submissions made by both the parties.

9. It appears from the order dated 21.01.2021 passed by this court in CRR 1926 of 2020 that this petitioner made an application for quashing of the instant proceeding qua petitioner on the ground that he has been falsely implicated and mere presence of the petitioner at the scene of the crime cannot be determinative to rope the accused persons in the instant case and there is no material suggestive of implication of the petitioner in the instant case. Learned counsel appeared on behalf of the State opposed such prayer taking support of the materials already collected during investigation. However, this court while adjudicating said proceeding, seeking proposed quashment, took note of the fact that the charge sheet have already been submitted and warrant of arrest is pending against the present petitioner and thereby this court rejected present petitioners aforesaid prayer for quashment with the following observation

“Having considered the submission of both sides and bearing in mind the materials already collected in the CD transpiring the name of the petitioner as one of the perpetrators to the crime, it would neither be advisable nor feasible to accede to the proposed quashment ignoring the materials already collected against the petitioner. By reasons of the proposed quashment, there is chance of rendering the prosecution case to go frustrated even after undertaking a successful investigation, which already ended in charge-sheet. The extraordinary power under section 482 Cr.P.C. is not appropriate to be exercised in the facts and circumstances of the case. The prayer for quashing is , thus, refused.”

10. It is very much clear from the observation made by this court in aforesaid CRR 1926 of 2020 preferred by the present petitioner that said observation was made by this court after filing of the charge sheet and after

considering all the materials collected by the investigating agency during investigation. Since then no new circumstance or ground has been put forth before this Court to reconsider or revisit the said observation passed in CRR 1926 of 2020, except the submission made on behalf of the petitioner that when said application was preferred the petitioner was not equipped with the materials which was served upon them under section 207 of the Code. But that ground has got no substance in view of the fact that, even if it is presumed that the said application was preferred by the petitioner without going through the materials that were collected during investigation, even then this court while passed the said order on 21.01.2021 had the opportunity to peruse all the materials collected during investigation and this Court passed the order “*bearing in mind the materials already collected in the CD*”.

11. In ***Rajib Thapar Vs. Madan Lal Kapoor***, reported in **(2013) 3 SCC 330**, the Supreme Court has clearly held that this is not a stage of evaluating the truthfulness or other wise of the allegations levelled by the complainant against the petitioner nor it is the stage for determining how weighty the defences raised on behalf of the petitioner are. Even if the accused is successful in showing some suspicion or doubt from the annexed documents, it would be impermissible to discharge the petitioner before trial because it would result in giving finality to the acquisitions levelled by the prosecution without allowing the prosecution to adduce evidence to substantiate the same. It was further held in the judgment that the converse is however not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences, the petitioner/accused

herein would still be in a position to succeed by establishing his defence by producing evidence in accordance with law.

12. In such view of the matter I do not find any illegality or impropriety in the order impugned, which calls for interference by this court invoking jurisdiction under section 482 of the Code.

13. CRR 3417 of 2022 thus stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)