

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (DB) 2866 of 2024

Amal Kumar Barman @ Amal Kr. Barman @ Amal Barman

Vs.

State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Soumya Nag, Adv.
Mr. Aditya Tiwari, Adv.

For the State : Mr. Debasis Roy, Ld. P.P,
Mr. Arijit Ganguly, Adv.
Mr. Koushik Kundu

For the de facto
complainant : Mr. Dhruv Surana, Adv.
Ms. Shivangi Indoria, Adv.

For Orders On: 19.12 .2024

Apurba Sinha Ray, J. :-

1. The petitioner claims that a co-accused namely, Ajit Kumar Mal was granted bail by a Co-ordinate Bench on 14.08.2024. The present petitioner

is similarly circumstanced and as such on the ground of parity he prays for favouring him with a similar bail order.

2. The learned counsel for the State opposes the prayer for bail on the ground that the present petitioner is not standing on the same footing with the other accused persons who were granted bail by this Court.

3. The learned counsel appearing for the de-facto complainant raises vehement objection to the bail prayer. According to him, the earlier bail orders were granted to the concerned accused persons in the absence of the de-facto complainant or her learned counsel. Without hearing the submission of the learned counsel of the de-facto complainant, the Hon'ble Court cannot consider the bail prayers of the accused persons. In support of his contention he has referred to a judicial decision reported in **(2022) 9 SCC 321 (Jagjeet Singh & Ors. Vs. Ashish Mishra alias Monu & Anr.)**.

4. The status report filed by the learned State counsel shows that there are 23 (twenty three) charge sheet named witnesses and the prosecution proposes to examine all the witnesses. The date for examination of de-facto complainant (PW1) has been fixed on 09.01.2025.

5. We have considered the Case Diary as well as materials on record. It is true that on 14.08.2024 one of the co-accused namely, Ajit Mal was enlarged on bail by a Co-ordinate Bench on the ground, inter alia, that the prosecution has failed to show the reason as to why the custody trial of the

accused person is required. It is further revealed that on 27.08.2024 another accused Basanta Mal has been enlarged on bail by a Co-ordinate Bench on the ground of parity. On both the dates i.e. 14.08.2024 and 27.08.2024, the de-facto complainant did not appear before the Hon'ble Co-ordinate Benches as aforesaid.

6. We have considered the case law reported in **(2022) 9 SCC 321 Jagjeet Singh & Ors. (supra)**. In the said case law it has been clearly mentioned that victim has a right to participate in the trial of the case including at the stage of hearing of the bail application and the court should hear the submission of the victim at the time of such hearing. Though we accept that in view of such judicial decision, it has become the law of the land that during hearing of the bail application of the accused the victim has a right to participate, but neither in the provisions of section 437 to 439 of Criminal Procedure Code nor in the said case law, there is any requirement/or obligation to the effect that the victim should be given an advance notice of hearing of dates in connection with bail application. In our case on 14.08.2024 and 27.08.2024, the victim did not appear to contest the bail application and, therefore, as there is no requirement for serving prior notice to the victim or the de-facto complainant, the relevant bail applications were considered in presence of the learned counsel of the State and also of the learned advocates of the accused. However, this Co-ordinate Bench cannot act as an appellate forum or a revisional forum over the order passed by another Co-ordinate Bench and therefore, we are constrained to confine our discussion so far as the present petition is concerned. In other

words, we shall consider the present petition on its merits and not on the plea of parity as claimed by the present petitioner, since in this case, at the time of hearing the learned counsel of the de-facto complainant intervened and objected to the bail prayer of the petitioner.

6.1. In the aforesaid reported decision, the Hon'ble Apex Court has reiterated the earlier guidelines for consideration of the bail application. In para 30 it has been clearly mentioned:-

“30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in *Prasanta Kumar Sarkar V. Ashis Chatterjee*, after taking into account several precedents, elucidated the following: (SCC p. 499, para 9)

“9.... However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behavior, means, position and standing of the accused,*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced;*
- (viii) danger, of course, of justice being thwarted by grant of bail.” (emphasis supplied)”*

6.2. Therefore, in view of the above, we propose to decide the fate of the instant petition in the light of the guidelines of the Hon’ble Supreme Court as aforesaid.

7. The de-facto complainant's submission that the present petitioner is not similarly circumstanced, can be weighed on the basis of materials on record. It appears that the present petitioner along with others allegedly assaulted the victim on a previous occasion over a dispute concerning felling of a tree and as a result of which, the petitioner surrendered and he was taken into custody in connection with relevant PS Case No. 203 of 2023 dated 10.05.2023 and on the same day the petitioner and other accused persons were enlarged on bail. However soon thereafter, they intruded the house of the victim and assaulted the de-facto complainant and victim mercilessly on the fateful night, and as a result of which the victim succumbed to his injury subsequently. This is a serious issue. After obtaining bail the present petitioner along with others went to the house of the victim and assaulted him in clear violation of the bail order granted by a court of law. It is further revealed from the Case Diary that the offending weapons, articles have been recovered from the house of the accused of Sukomol Bhunia @ Sukumal Bhunia as per leading statements of the present petitioner and other accused persons including Sukomol Bhunia @ Sukumal Bhunia. The seriousness of the allegation and the attitude of the present petitioner along with others do not create any confidence in the mind of this court that no such similar offences will be committed by the present petitioner if he is enlarged on bail. Thus, antecedents of the petitioner do not allow our conscience to allow the prayer for bail at this stage. Needless to mention, the relevant factual aspects coupled with other

materials in the CD were not brought to the notice of the Co-ordinate Benches on 14.08.2024 and 27.08.2024.

8. The bail petition stands dismissed. The case diary be returned.
9. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)