

19.02.2024
38 & 39
sdas

CRR 156 of 2024
in c/w
CRM (DB) 4802 of 2023
with
CRM (DB) 4793 of 2023

CRR 156 of 2024

In Re : Court on its own motion Petitioner

in c/w
CRM (DB) 4802 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Pandua Police Station Case No. 91 of 2023 dated 21.02.2023 under Sections 392/302/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

And

In Re : Amit Singh @ Amit Kumar Singh @ Hero Singh @ Hiro & Anr. Petitioners

Mr. Anit Dey

..... for the petitioners
(in CRM (DB) 4802 of 2023)

Mr. Sudip Ghosh Chowdhury
Mrs. Shrejeta Mitra

..... for the petitioner
(in CRM (DB) 4793 of 2023)

Mr. Sudip Ghosh
Ms. Debjani Dasgupta

..... for the State
(in CRM (DB) 4802 of 2023)

Mr. Swapan Banerjee
Mr. Palash Chandra Majhi

..... for the State
(in CRM (DB) 4793 of 2023)

1. Learned Counsel for the petitioners submits there is no direct evidence connecting them with the murder. Co-accused Suraj Kr. Singh @ Yubraj Singh has been enlarged on bail. They

are in custody for 180 days and 344 days respectively. Accordingly, they pray for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioners were seen with co-accused by witnesses. They have been identified in the course of test identification parade. Documents belonging to the deceased were recovered from petitioner no. 2. It was also contended that bail was granted to Suraj Kr. Singh @ Yubraj Singh on the erroneous finding that 'no FSL report had been placed that the firearm recovered from him was used to murder the victim'.

3. In the light of the aforesaid submissions, a suo motu Rule was issued upon Suraj Kr. Singh @ Yubraj Singh to show-cause why his bail should not be cancelled.

4. Learned Counsel for the petitioner, Suraj Kr. Singh @ Yubraj Singh submits bullet recovered from the body of the deceased did not match with the firearm recovered from his client.

5. In reply, learned Counsel for the State submits bullet head found inside the vehicle matched with the firearm of Suraj Kr. Singh @ Yubraj Singh.

6. Firstly, with regard to the Suo Motu Rule issued to cancel the bail of Suraj Kr. Singh @ Yubraj Singh, we note prosecution had not placed FSL reports before this Court earlier. Consequentially, an incorrect finding was recorded in the order granting bail to Suraj Kr. Singh @ Yubraj Singh as follows: "No FSL report is placed on record to show that recovered firearms were used to murder the victim."

7. Presently, FSL report has been placed on record. Reports show firearm recovered from Suraj Kr. Singh @ Yubraj Singh had matched with one of the bullet heads recovered from the vehicle. This is certainly an incriminating stance implicating the said accused. However, it is relevant to note the bullet head recovered from the body of the deceased had matched with the firearm of co-accused, Vishal Singh @ Bishal Singh and not Suraj Kr. Singh @ Yubraj Singh. Under such circumstances, even if the FSL report is taken into consideration, it would not lead to the conclusion that Suraj Kr. Singh @ Yubraj Singh had murdered the victim. This Court has also taken into consideration the proposition of law that it cannot review its own order (see *Abdul Basit alias Raju & Ors. vs. Mohd. Abdul Kadir Chaudhary & Anr.*¹). The only exception may be a case of fraud which renders the order *void ab initio*. Non-consideration of a relevant fact in the bail order, would not fall with the species of fraud. There is also no allegation of misuse of liberty by the said accused. Under such circumstances, we discharge the Rule issued upon Suraj Kr. Singh @ Yubraj Singh.

8. Coming to the case of the petitioners we note they were seen with co-accused by witnesses prior to the occurrence. However, none of the witnesses speak of their presence at the place of occurrence. Firearm recovered from the petitioner no. 1 does not match with the bullets recovered from the spot. Whether recovery of documents of the deceased from the petitioner no. 2 is

¹ (2014) 10 SCC 754

sufficient to unerringly point at his guilt requires to be assessed during trial.

9. We have also taken into consideration the submission of the State that petitioner no. 1 had absconded and has criminal antecedents. Under such circumstances, we direct that the petitioners shall be released on bail subject to strict conditions.

10. Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Hooghly, on further condition that while on bail petitioners shall remain within the district of Hooghly except for the purposes of investigation and /or attending court proceeding and shall meet the officer-in-charge of Pandua Police Station once in a week until further orders. Petitioners shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

11. In the event the petitioners fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

12. The application for bail is, accordingly, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)