

14.05.2025
Item no.18(DL)
Court No.39
srm
(Rejected)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION**

C.R.M.(DB) 899 of 2025

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 read with Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with POCSO Trial No.04(01) of 2023 arising out of Hanskhali Police Station Case No.327 of 2022 dated 10.04.2022 re-registered as C.B.I. Case No.RC0562022S0011 under Sections 376(D)/302/201/34 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012, pending before learned Additional District & Sessions Judge Cum Judge, Special Court (POCSO Act), Ranaghat Nadia;

And

In Re : Samarendu Gayali @ Samar

.... Petitioner

Mr. Arindam Jana,
Mr. Asraf Mondal,
Md. Bani Israil,
Syed Md. Sayeed

...for the Petitioner.

Mr. Amajit De

... for the CBI.

Ms. Sibangi Chattopadhyay,
Ms. Momtaj Begam

...for the *de facto* complainant.

Learned Advocate for the petitioner submits that the petitioner stands on the same footing as that of co-accused Pijush Kanti Bhakta, who was enlarged on bail by this Hon'ble Court in CRM (DB) 2499 of 2024, since charges against both of them are similar. The bail prayer of the petitioner has been opposed by the CBI solely on the ground of criminal antecedent. However, criminal antecedent of an accused cannot be the sole basis for rejection of his bail prayer. To buttress his contention

he relies on the decision of the Hon'ble Supreme Court passed in ***Prabhakar Tiwari versus The State of Uttar Pradesh & Anr.*** reported in ***(2020)11 SCC 648***. He further indicates that offences charged against the petitioner are bailable offences. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the CBI indicates that the petitioner is a habitual offender and there are about seven criminal cases against this petitioner. The co-accused Pijush Kanti Bhakta, who has been granted bail, had no criminal antecedent. The petitioner restrained the victim's family from taking the victim to the hospital by using his influence in the locality due to which the victim succumbed to her injuries. He tried to pressurize the complainant from lodging complaint which has revealed during the course of investigation. After the last rejection of the bail prayer of the petitioner on 9th July, 2024, 14 witnesses have been examined on behalf of the CBI. Therefore, no such delay in trial can be attributed to the CBI. There are evidences on record against the petitioner of threatening the complainant in the police station. Thus the possibility of threatening witnesses and tampering evidences is well founded against the petitioner. He seeks for dismissal of the application.

Learned Advocate for the *de facto* complainant also opposes such prayer for bail and submits that the victim could not reach the hospital for treatment due to illegal restraining by the present petitioner and ultimately she succumbed to her injury. The petitioner being an influential person, if granted bail,

will influence the trial in the long run. She also informs that the trial has proceeded considerably upon examination of 26 witnesses. She seeks for rejection of the bail prayer.

Perused the materials on record.

At the outset, objecting to the prayer for bail of the petitioner, it has been vouched on behalf of the prosecution that the petitioner has criminal antecedent. In *Pravakar Tewari (supra)*, the Hon'ble Supreme Court observed as follows:

“7. On considering the submissions of the learned counsel for the parties, having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in Mahipal for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.”

The proposition as laid down by the Hon'ble Supreme Court as aforesaid manifest that the offence though grave and serious and there being several criminal cases pending against the accused, those factors themselves cannot be the basis for refusal of prayer for bail. Hence the aspect of criminal antecedent cannot be the sole ground for rejection of the bail.

Be that as it may, in the earlier bail application being CRM(DB) 2045 of 2024 this Court has considered the evidence of PW2 and observed as follows:

“Learned Senior Counsel for Central Bureau of Investigation (CBI) strongly opposes the prayer for bail. He says that this petitioner is a politically influential person. It is also stated that this petitioner has antecedents and is involved in six other cases, he draws to our attention to the evidence of PW 2 recorded by the learned Trial Court. A small portion of that evidence is reproduced hereunder:

‘..... Thereafter, in the P.S. itself, at that time itself Samar Gayali started saying to me that I have spoiled the future life of his son in such a manner. After that, the O.C. ousted us from the P.S. room. Then, after 12.00 at night, we were again taken to go in the room of the O.C. At that time, the O.C. offered us to Rupees Ten Lakhs, so as to withdraw our complaint. To that, I replied that, my daughter has died, what I will do with the money, I want punishment of the culprits. At about 01.15 a.m. at night, we were sent back to our house by the police. In the midway to our house, the O.C. telephoned us asking us to go the P.S. at 10.00 a.m. in the morning.....’

We have considered the facts and circumstances of the case and the material on record. We are of the view that if we enlarge this petitioner on bail, he might tamper with evidence or influence witnesses or threaten them and otherwise try to influence the trial. We are, therefore, not inclined to all his prayer for bail, at this stage.”

Therefore, from the aforesaid order, it is found that the Court after considering the deposition of witness came to a clear finding that if this petitioner is enlarged on bail he may tamper with evidence and influence the witnesses or threaten them and otherwise try to influence the trial.

In a recent decision of the Hon’ble Supreme Court in ***Renuka versus State of Karnataka & Anr.*** reported in **1025 INSC 596**, it is observed as follows:

“17. Finally, it is argued there are case and counter case and proceeding against parents-in-law have been quashed by the coordinate bench. Noting the parents-in-law are septuagenarian and there is no whisper in the FIR that they participated in the assault, proceeding against them was quashed. Uncontroverted allegations in the FIR/Chargesheet unequivocally implicate

respondent husband in the assault. He stands on the same footing with the 8 other in-laws i.e. brother-in-law/sisters-in-law against whom the proceeding was not quashed in Criminal Petition No. 101599 of 2021. Though the order refusing to quash the proceeding against some of the in-laws was passed earlier, it is inexplicable why there is no reference to the said order in the impugned order quashing proceeding against the respondent-husband. It was incumbent on the Judge while quashing the proceeding against the respondent husband to refer to the earlier decision of the co-ordinate bench and distinguish the reasons therein to arrive at a different conclusion. Failure to do so infracts judicial propriety and discipline. Consistency in judicial outcomes is the hallmark of a responsible judiciary. Inconsistent decisions coming out from different benches shake public trust and reduce litigation to a punter's game. It gives rise to various insidious sharp practices like forum shopping spoiling the clear stream of justice. Impugned order suffers from the vice of judicial caprice and arbitrariness and is liable to be set aside also on this score."

Bearing in mind the aforesaid proposition, this Court finds that there are no materials to arrive at a different conclusion with that of the earlier order of this Court while rejecting the bail prayer of the petitioner observing that if the petitioner is enlarged on bail, he might tamper with or influence the witnesses or threaten them and otherwise try to influence the trial. In view of the above, I am not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected.

The application for bail being **CRM (DB) 899 of 2025** stands dismissed.

(Bivas Pattanayak, J.)