

05.08.2025
Court No.28
Item No.6
ssi

CRM (M) 1151 of 2025

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And

In the matter of: **Ratna Sarkar & another.**

....Applicants/Petitioners.

Mr. Kalyan Bandhopadhyay, Ld. Sr. Adv.
Mr. Arka Kumar Nag
Ms. Sanjana Saha

...for the petitioners

Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee
Ms. Sarmistha Basak
Mr. Samrat Mondal

.....for the de facto

Mr. Dhiraj Trivedi, Ld. DSG
Mr. Amajit De

.....for the CBI

This is an application for bail in connection with Sessions Case No. 06 of 2025 presently pending before the Court of the learned Judge, Bench-I, City Sessions Court, Calcutta arising out of CBI Case No. RC0562021S0008 dated 01.09.2021 which, in turn, arose from Narkeldanga Police Station Case No. 124 dated 02.05.2021 under Sections 302/341/323/506/427/143/147/148/149/449/452/201/395/34/109/120B of the Indian Penal Code.

After the matter was assigned to this Bench, it has been heard on a few occasions.

Learned senior counsel appearing on behalf of the petitioners has submitted as follows. The petitioner no. 1 was a Sub-Inspector of Police while the petitioner no. 2 was a Home Guard, both attached to

the Narkeldanga Police Station at the relevant time. A brutal murder took place in the area on 02.05.2021. The first FIR lodged was substituted by a second FIR. After a direction was passed by this Court directing transfer of the investigation of the case to the CBI in August, 2021, the CBI took up the investigation. It appears that the first charge sheet was submitted by the CBI in September, 2021. Over nearly the same materials that were there at the time of submission of the first charge sheet, a second supplementary charge sheet has now been filed against the additional accused, including police personnel like the present petitioners and certain political figures. The same has been done only to fix the ruling political dispensation. By an order dated 16.07.2025 passed by this Court in an application for anticipatory bail of the other co-accused being CRM (A) 2487 of 2025, this Court directed the trial Court to adjourn the matter on the next date fixed for hearing i.e., on 18.07.2025 and granted liberty to the trial Court to issue summons in similar fashion against the said co-accused for a next date beyond the first week of August, 2025. In complete violation of such order, adjournment was granted only qua such other co-accused. When the present petitioners along with another went to surrender responding to the summons issued, they were taken into custody. This is despite the fact that the petitioners all along cooperated with the investigation and never tried to tamper with evidence or influence or threaten the witnesses. Surprisingly, the petitioners were taken into custody in spite of the fact that the CBI had prayed only for issuance of process and the trial Court had held that there was no requirement of issuing warrant of arrest. In such circumstances, the petitioners could never conceive of that they would

be taken into custody upon surrender. Otherwise, they could have filed application for anticipatory bail. Significantly, during the first further investigation and then the second further investigation by the CBI, which continued for four years, no effort whatsoever was made to take the petitioner into custody. Now, all the evidences have been collected and charge sheet submitted. Therefore, no fruitful purpose would be served by keeping the petitioners in custody. The Hon'ble Apex Court has time and again frowned upon the practice of taking custody of accused when they appear pursuant to issuance of summons, especially in cases where they had not been arrested during investigation and had cooperated with the same. On this reliance may be placed on (i) Siddharth -vs- State of UP, (2022) 1 SCC 676 (ii) Aman Preet Singh -vs- Central Bureau of Investigation, (2022) 13 SCC 764. The spirit of Tarsem Lal -vs- Directorate of Enforcement, Jalandhar Zonal Office, (2024) 7 SCC 61 also comes to the aid of the present petitioners. A prima facie view is to be taken in a hearing for bail application and mini trial is to be avoided. However, the facts need to be analyzed in brief. On facts, although an absurd charge of conspiracy in committing murder has also been presented, the main allegations against the petitioners are that of tampering with evidence. So far as the first charge is concerned, it is evident from statements of witnesses, including the brother and the mother of the deceased that after a group of miscreants attacked the party office in question, the brother called up a police personnel and while the incidents continued, two constables came. It is apparent that they tried to manage the situation and asked the brothers to go away. It was while the two were trying to prevent the crowd from causing harm that a

group of miscreants attacked the brothers at their house and by the time more police arrived, they have delivered the fatal blows on the victim deceased. There is no material whatsoever in the charge sheet which either gives the details of the timeline or even remotely suggests that the police deliberately came late, thus, allowing such incidents to occur. Therefore, the learned Court ought not to have erroneously emphasized on a so called attempt to abet such offence. So far as the allegation of tampering with evidence is concerned, the petitioners were not in charge of the entire thing. The allegation against the petitioner no. 1 was that she obtained signature of the mother of the victim on a blank paper and used it to prepare the first FIR. The content of the first FIR substantially reflects the final incidents that led to the death of the victim. It only leaves out the prefatory part about the attack on the party office and does not specifically name the assailants. Therefore, it cannot be said that such first FIR was too much different from the one registered later or that any ulterior purpose would be served by having such first FIR registered. So far as the allegations against the petitioner no. 2 are concerned, it is about washing a blood soaked brickbat available at the spot upon directions given by a senior police officer. Actually, there were three different versions available in the prosecution papers. At three different places witnesses have said that three different persons had washed the blood. In fact, on one occasion, a lady had asked that as the children were getting scared, the blood should be removed and then she was asked to remove blood. Therefore, no intentional wrongdoing can be attributed to the petitioner no. 2 in this regard. All these materials were mostly available to the CBI earlier. Yet, they did not choose to

bring such charges or make the present petitioners accused in the first charge sheet filed by them. The present petitioners, in fact, were made witnesses in the said first supplementary charge sheet. Suddenly, without any further material, the CBI now decided to put such serious charges against the petitioners after four long years. This is not a case where any further detention of the petitioner can be sustained.

Learned senior counsel representing the CBI strongly has opposed the prayer for bail and has submitted as follows. The case at hand involves a most gruesome murder that had taken place as part of post-poll violence committed by the ruling political dispensation of the State after the elections of 2021. The victim deceased was brutally assaulted and murdered in front of his aged mother and brother. The other victim brother was also assaulted. All these happened during the presence of the State police personnel. First, adequate forces were late in arriving, thus, allowing an opportunity to the miscreants to complete their dirty job. Secondly, the evidence available was destroyed. There was ample evidence that the police personnel had bloodstained brickbat washed and did not fulfill their official duties of seizing relevant materials. These were deliberate acts to please their political masters. There is a video recorded by the victim immediately before the incident that gives a clear account of what was going on outside. In continuation of such hush up, the petitioner no. 1 got the aged mother of the victim sign on blank paper and prepared a softer FIR with it. It had no mention about the earlier attack on the party office. Nor did it contain the names of any of the assailants. On the other hand, the petitioner no. 2 acted in collusion with the other

errant police officers and washed a blood soaked brickbat, which was a piece of valuable evidence. All these were not done by ordinary men, but by police personnel who were supposed to do their duty to prevent crime and collect evidence after a crime was committed. It is true that there was delay in filing the supplementary charge sheet. Actually, after filing of the first charge sheet in 2021, further investigation was being carried out and different aspects of the facts were being carefully assessed. So the second supplementary charge sheet could be filed only in 2025. The severity of the offence, the clinching piece of evidence collected and the influential position of the present petitioners do not warrant that bail be granted to the present petitioners.

Learned counsel appearing on behalf of the de facto complainant/brother of the deceased has vehemently opposed the prayer for bail. He has submitted that the first FIR tried to give a different picture about the incident at hand. It referred to an unconnected and imaginary dispute regarding allegation of holding on to Railway rooms as the reason for the assault, among other things. The role of the petitioner no. 2 is clearly made out from the materials relied upon by the CBI. In fact, during pendency of the proceeding several attempts have been made on the lives, properties and liberty of the brother and the mother of the victim. This had prompted this Court to provide protection to the brother of the victim. The other issue is the continuous initiation of false and frivolous criminal proceeding against the relatives of the victim deceased at the behest of the State. Unless the accused are kept in custody, a fair trial would not take place.

The murder in question was indeed a most gruesome crime that needs to be sternly dealt with.

However, the role of each accused also has to be carefully assessed and the question of grant of bail has to be considered on its settled principles.

So far as the charge of conspiracy to murder is concerned, the second supplementary charge sheet of the CBI, inter alia, states - "The timely intervention of the State Police could have prevented the murder of the deceased Avijit Sarkar". But, it does not mention a clear timeline or details for the arrival and operations of the State police personnel. It is another thing that the same can, nevertheless, be found out by scanning the materials on records.

As regards, the allegations against the petitioner no.1 of taking signature of the mother of the victim on a blank paper is concerned, there are some commonalities between the first FIR and the subsequent FIR registered. It will be for the trial Court to find out whether such signature was taken without the consent of the victim and whether a false version was deliberately prepared as the first FIR.

There are three versions available in the papers regarding washing of bloodstains. In the statement of the victim's brother dated 26.08.2021, there is a reference to blood washed by one Sujata De as directed by the O.C. In the statement of one a witness R. K. Jana dated 06.09.2021, there is a mention of a lady taking of the issue of children getting scared seeing blood and the O.C. asking her to wash the blood. There is also a subsequent statement given by the brother of the victim as recorded before a learned Magistrate on 03.02.2022 that on the instruction of the O.C., the petitioner no.2 washed the

bloodstain brickbat. Admittedly, if at all, the petitioner no.2 acted under the direction of a superior. It would, nevertheless, be for the trial Court to decide on his alleged culpability in this regard.

Unfortunately, except for one such statement as referred to above, most of the evidence as referred to were available at the time of submission of the first supplementary charge sheet. Yet, the petitioners were not made an accused and the CBI waited for four long years to file the present charge sheet leveling such new charges against the petitioners.

In fact, CBI did not even ask for warrant of arrest to be issued against the petitioners. The trial Court too did not consider it necessary to issue warrant of arrest.

In this context, it may be germane to quote the observations of the Hon'ble Apex Court in **Aman Preet Singh -vs- CBI, (2022) 13 SCC 764** as under:

“12. Insofar as the present case is concerned and the general principles under Section 170 CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because chargesheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.”

The spirit of the ratio laid down in **Tarsem Lal -vs- Directorate of Enforcement Jalandhar Zonal Office** reported at **(2024) 7 SCC 61** may also be referred to in this regard.

In view of above discussions, the materials contained in the case diary and the alleged roles ascribed to each of the present petitioners,

I am inclined to grant bail to the present petitioners, however, on the certain conditions. The petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the Chief Judicial Magistrate, Kolkata and on further conditions that the petitioners shall -

- (i) not threaten or intimidate witnesses;
- (ii) regularly attend the trial Court;
- (iii) not enter the immediate locale where the victim's brother and the mother reside i.e., Sitalatala Lane, Kolkata till conclusion of the trial.
- (iv) not be deployed as a police personnel at the Narkeldanga Police Station till conclusion of trial. For this, the competent authority of the State is directed to immediately transfer the petitioners from the Narkeldanga Police Station to any other place, if they are presently deputed at such Police Station.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)