

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (DB) 3257 of 2024
Rashid Sk. @ Rasid Sekh @ Rashis Sk.
Vs.
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Diptangshu Basu, Adv.

For the State : Ms. Amita Gaur, Sr. Adv.
Mr. MFA Beg, Adv.

For Orders On: 13.01.2025

Apurba Sinha Ray, J. :-

1. Learned counsel for the petitioner has submitted that the petitioner is in custody for more than 303 days and there is no chance of an early conclusion of the trial since there are 24 witnesses. The learned counsel has further submitted that this accused was on bail previously. However, due to

some misunderstanding he was again arrested on 06.03.2024 and since then he has been languishing in the judicial custody. As the investigation is complete the petitioner may be enlarged on bail on any condition.

2. The learned counsel for the State opposes the prayer for bail. According to her, initially the petitioner was enlarged on bail. Subsequently, his bail was cancelled and he was directed to surrender before the Learned Court of Chief Judicial Magistrate, Berhampore, Murshidabad but he did not comply with such direction and as a result, he was arrested on 06.03.2024.

3. The learned counsel for the State further submits that the instant application for bail should be rejected since the petitioner was involved in committing murder of three witnesses in connection with the relevant sessions case while he was enlarged on bail. For such murder of three witnesses another case being Domkal PS Case No. 384 of 2019 dated 16.06.2019 is still pending. If the petitioner is enlarged on bail he may again commit such type of heinous crimes once again.

4. The learned counsel for the petitioner has disputed such submission of the learned counsel of the State. According to him, the order of cancellation of bail of the present petitioner was passed on 14.07.2020 by the Learned Sessions Judge, Berhampore, Murshidabad without taking into consideration the factual aspects involved and further the order dated 19.07.2024 passed by the Learned Additional Sessions Judge, (Judge,

Special Court) (E.C. Act) Berhampore, Murshidabad in connection with SS. Sl. No. 02/2022 and ST No. 06 (July) 2024 arising out of Domkal PS Case No. 215 of 2019 dated 19.03.2019 under Sections 341/324/326/307/302/34 of the Indian Penal Code, 1860 is not tenable in the eye of law. The learned counsel for the petitioner has further submitted that the FIR in connection with Domkal PS Case No. 384 of 2019 dated 16.06.2019 does not contain the name of the petitioner as an accused.

5. We have considered the rival submission of the learned counsels of the parties. The instant case has a chequered history. The Domkal PS Case No. 215 of 2019 dated 19.03.2019 was started against the present petitioner along with others on the allegation that they had murdered one Altab Sk. and subsequently the present petitioner and others were taken into custody and remanded to custody. Subsequently, some accused persons were granted bail on 30.05.2019 and 09.08.2019. After obtaining bail in Domkal PS Case No. 215 of 2019 dated 19.03.2019, some of the accused and others allegedly committed murder of three witnesses in connection with aforesaid case on 16.06.2019. The record shows that the present petitioner Rashid Sk. was in the judicial custody on 16.06.2019 in connection with the Domkal PS Case No. 215 of 2019 and such detention was continued at least till 14.11.2019. Therefore, it prima facie appears that Rashid Sk. was not in the group which allegedly committed the murder of three witnesses as aforesaid and for which Domkal PS Case No. 384 of 2019 dated 16.06.2019 was started. But unfortunately, the order dated 14.07.2020 passed by the Learned Sessions Judge, Murshidabad did not consider this fact though he

indicated that the petitioner Rashid Sk. obtained bail in Criminal Misc Case No. 4810 of 2019 dated 14.11.2019. We have also considered the FIR in connection with Domkal PS Case No. 384 of 2019 dated 16.06.2019 and we did not find the name of the present petitioner as an accused. The charge sheet submitted in connection with the aforesaid Domkal PS Case No. 384 of 2019 dated 16.06.2019 also does not contain the name of the present petitioner. Therefore the observation of the Learned Sessions Judge, Murshidabad in the order dated 14.07.2020 that the present petitioner was involved in the commission of the murder of three witnesses of Domkal PS Case No. 215 of 2019 dated 19.03.2019 is appeared to be incorrect. However, the Learned Additional Sessions Judge was under a duty to follow the observation of the Learned Sessions Judge, and while passing the order dated 19.07.2024 the Learned Additional Sessions Judge, Berhampore, Murshidabad followed the reasonings given by the learned Sessions Judge, Murshidabad.

6. However, one important aspect should not be lost sight of us. The order of cancellation of bail of the petitioner was done by the Learned Sessions Judge on 14.07.2020 on the grounds, inter alia, that the petitioner Rashid Sk. also threatened and intimidated the other witnesses in connection with Domkal PS Case No. 215 of 2019 who are still alive. If after getting bail on 14.11.2019 the petitioner involved himself in intimidating and threatening witnesses, his bail order dated 14.11.2019, then, can be said to have been rightly cancelled by the Learned Sessions Judge,

Murshidabad on that ground alone. Therefore, though the order dated 14.07.2020 has failed to consider that the FIR in connection with Domkal PS Case NO. 384 of 2019 does not contain the name of the petitioner since on 16.06.2019 he was in judicial custody in connection with another PS Case No. 215 of 2019 dated 19.03.2019, the observation of the Learned Session Judge on 14.07.2020 followed by the Learned Additional Sessions Judge, (Judge, Special Court) (E.C. Act) Berhampore, Murshidabad in passing the order dated 19.07.2024 cannot be said to be a wrong observation or cannot be said to be devoid of any material particulars, since there are materials showing that after obtaining bail on 14.11.2019, the petitioner involved himself in threatening and intimidating witnesses who are still alive. Therefore, though the petitioner has been able to show us that he was in custody when the occurrence of murder of three witnesses was taken place, he is unable to show that the allegations of threatening and intimidating the other witnesses while he was on bail, are baseless, and accordingly we are not inclined to allow his prayer for bail at this stage. Needless to mention, the petitioner did not challenge the order dated 14.07.2020 passed by the Learned Sessions Judge, Murshidabad who observed that the petitioner along with other threatened and intimidated the witnesses who are still alive while the petitioner was on bail.

7. Therefore, we apprehend that if the petitioner is enlarged on bail, there is likelihood of committing similar type of offences at his instance.

Accordingly, we are not inclined to enlarge him on bail. His prayer for bail stands rejected.

8. Accordingly, CRM (DB) 3257 of 2024 is dismissed. No order as to costs.

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.)