

(1995) 01 CAL CK 0043

In the Calcutta High Court

Case No : Criminal Misc. Case No. 7089 of 1994

Gayaram Mondal

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Evidence Act, 1872 — Section 115

Citation : (1995) 1 CALLT 407 : 99 CWN 365

Hon'ble Judges : Satya Narayan Chakrabarty, J; Arun Kumar Dutta, J

Bench : Division Bench

Advocate : Syed Shahid Imam, for the Appellant; S. Dhar, for the Respondent

Judgement

Arun Kumar Dutta, J.—By this Application u/s 439(2) of the Code of Criminal procedure the petitioner-Informant has prayed the Court for cancellation of bail granted to the Opposite-party No. 2-accused, Bejoy Mondal, by the learned Sessions Judge of 24-Parganas (South) at Alipore by his order dated 19th September, 1994 in Criminal Misc. Case No. 5143 of 1994 before him in connection with Bhangore P.S. Case No. 197(9) of 1994 under Sections 147/148/149/325/326/307/304, I.P.C., on the grounds made out therein.

2. We had already heard the submissions of the learned Advocates for the petitioner and the Opposite-party No. 1-State of West Bengal. The Opposite-party No. 2-accused Bejoy Mondal did not appear before the Court during the hearing despite due service by Registered post on personal acknowledgement on 21st November, 1994, as appearing from the Affidavit-of-Service filed by the petitioner.

3. Upon hearing the submissions of the learned Advocates for the petitioner and the Opposite-party No. 1-State of West Bengal and perusal of the materials on record, it appears that on 8th September, 1994 at about 7.30 P.M. the accused Lakhan Mondal, Ranjan Mondal, Ramal Mondal, Pulin Mondal, Phatik Mondal, Hemanta Mondal, Chimanta Mondal had allegedly picked up quarrel with the

petitioner and his other family members, and being aided and abetted by each other, armed with lathis and Da, had attacked the petitioner, his brothers and uncle, as alleged in the F.I.R. The accused Chimanta Mondal had attacked the petitioner's brother Kashinath Mondal on his head by a "Da", he was carrying on his hand, as a result of which the victim had sustained serious and grave head injuries. When the petitioner, his brothers and uncle went to Kashinath's rescue, the other accused persons, aided and abetted by each other, more particularly, the accused Ranjan Mondal and Pulin Mondal, had assaulted the petitioner's uncle and broke his hand and caused serious injuries to him. The entire assault took place at the behest of and under the direct leadership and instigation of the accused Opposite-party No. 2-Bejoy Mondal. The injured Kashinath Mondal had to be removed to the Hospital where he had subsequently succumbed to his injuries. On the basis of the F.I.R. lodged by the Informant on such allegations, the police had started the relevant Bhangore P.S. Case No. 197(9) dated 9.9.94, and had arrested the accused Bejoy Mondal, along with four others, from the village on the same day, who were produced before the Sub-Divisional Magistrate concerned on 10th September, 1994.

4. The Application for Bail on behalf of Bejoy Mondal and others had been rejected by the learned Sub-Divisional Judicial Magistrate at Alipore on 17th September, 1994 whereupon the accused Bejoy Mondal had moved an application before the learned Sessions Judge at Alipore for bail u/s 439 of the Criminal Procedure Code contending therein that he is falsely implicated in the case and is an innocent person and had no complicity with the alleged incident. The learned Sessions Judge had granted interim bail to the Opposite-Party No. 2-accused Bejoy Mondal by his order dated 19th September, 1994 in the relevant Criminal Misc. Case No. 4143 of 1994 till 24th November, 1994 for the reasons recorded therein.

5. As soon as the accused Bejoy Mondal had come out of the Jail he started threatening the petitioner and other family members openly and in broad daylight threatening them that they would meet the same fate as that of Kashinath Mondal. On 20th September, 1994 about 485 villagers had submitted a mass petition to the Officer-in-Charge, Bhangore Police Station, complaining about the illegal, criminal, and anti-social activities of, the accused Bejoy Mondal. The accused Bejoy Mondal having threatened the petitioner that he would take his life, the latter had lodged a General Diary against the former before the Bhangore Police Station on 23rd September, 1994, which was entered in G.D.E. No. 1088. On 24th September, 1994 the petitioner's uncle Arun Kumar Mondal was again threatened by the accused Bejoy Mondal that he would take his life, cut his head and play football with it in the village, when he was armed with lethal weapons like dagger and revolver, for which the petitioner's uncle had lodged a General Diary before the Bhangore P.S. on 24th September, 1994, being G.D. Entry No. 1194. On 25th September, 1994 the accused Bejoy Mondal, along with others, had formed an unlawful assembly, armed with pistol etc. to attack the petitioner's house, but since the petitioner was accompanied by 12 others at

that time, their plan could not succeed for which he had lodged a General Diary at the Bhangore P.S., being G.D. Entry No. 1182. On 26th September, 1994 the accused Bejoy Mondal, along with others, had threatened the petitioner's father and his sons wanting Dalai Mondal, the petitioner's brother to be killed and would not rest till the same was done and the entire family of Tarapada Mondal was wiped out for which the petitioner's father had lodged a General Diary before the Bhangore P.S. on that day being numbered G.D. Entry 1152.

6. In the aforesaid circumstances, the petitioner had filed an application before the learned Sessions Judge at Alipore u/s 439(2) of the Cr. P.C. praying for cancellation of bail granted to the accused Bejoy Mondal, which was registered as Criminal Misc. Case No. 5304 of 1994. The learned Sessions Judge by his order dated 27th September, 1994 had directed the Investigating Officer to produce the case diary on the next date fixed on 24th November, 1994, causing grave anxiety and mental strain to the petitioner as they are living under constant threat on their lives by the accused Bejoy Mondal and his associates. Hence the instant application. It, however, appears from the record that the learned Sessions Judge-in-Charge by his order dated 24th November, 1994 had confirmed the interim bail granted to the accused Bejoy Mondal on the same terms and conditions.

7. As already indicated above, the Opposite-Party No. 2-accused Bejoy Mondal, though duly served on personal acknowledgement, has not come forward to oppose the petitioner's application for cancellation of his bail, clearly suggesting that he is not in a position to oppose the same. Curiously, however, the Opposite-Party No. 1-State of West Bengal had sadly sought to oppose the petitioner's application by filing a belated report from the Investigating Officer dated 12th January, 1995 stating therein that it is not necessary to cancel the bail of the Opposite-Party No. 2-accused Bejoy Mondal for the reasons stated therein; even though it should itself have prayed for cancellation of bail granted to the accused concerned or, at any rate, supported the petitioner's application therefore on the allegations made therein. It has been stated in the aforesaid report of the I.O. that it transpired during investigation that the accused Bejoy Mondal had once been a "terror" and "furious" type of man "by power of a party", lending point to the petitioner's contention. It is dubious to note that there is nothing in the said report to indicate that any enquiry had been made by the I.O. in respect of the allegations made by the petitioner and his family members, entered in the several G.D. Entries of the Bhangore P.S., as referred to above. We wonder how without making any enquiry as to the allegations made therein the I.O. could conceivably state that "it is not necessary to cancel the bail" of aforesaid accused. The failure on the part of the Investigating Officer to make enquiry as to the allegations made, entered in the aforesaid G.D. Entries, clearly seems to be significant and observable : The implication appears to be immediately apparent and obvious, suggesting that he is bent upon shielding the said accused Bejoy Mondal in the matter. In the absence of any enquiry by the Investigating Officer as to the allegations made by the petitioner and his other family

members, entered in the aforesaid General Diaries, and in the absence of any Affidavit-in-Opposition by any of the Opposite-Parties controverting the allegations of the petitioner in his relevant application, supported by Affidavit and the Annexures annexed therewith, including the copies of the aforesaid G.D. Entries, the petitioner's allegations made therein remain uncontroverted, and must be accepted as such. The Opposite-Party No. 2-accused Bejoy Mondal having thus threatened the petitioner and his family members for having lodged the F.I.R., as appearing from the aforesaid General Diary Entries, and having thus abused the liberty of bail granted to him, the petitioner's application for cancellation of his (accused) bail must clearly be allowed.

8. While parting with the matter we would also like to note with painful disappointment that even though the Opposite-Party No. 2,-accused Bejoy Mondal is a named accused in the relevant F.I.R., having allegedly taken an active and leading role in the alleged occurrence resulting in the death of the injured Kashinath Mondal as a result of the head injuries sustained by him during the alleged occurrence, and also causing grievous hurt to the petitioner's uncle by breaking his hand, was granted Interim Bail within 10 days of his arrest and production before the Court by the learned Sessions Judge concerned by his order dated 19th September, 1994 at a very early stage of investigation, without even caring to call for and peruse the relevant Case Diary. The Interim Bail granted to the said accused is also liable to be cancelled on that score alone. It is also curious to note from the certified copy of the learned Sessions Judge's order dated 19th September, 1994 that the learned P.P. did not seem to seriously oppose the application for bail on behalf of the accused Bejoy Mondal : The learned P.P. appears to have merely submitted before the learned Sessions Judge that he had "nothing to submit except that the case is in its early stage :"

9. Even though an application for cancellation of the Interim Bail had been filed by the petitioner before the learned Sessions Judge, registered as Criminal Misc. Case No. 5305 of 1994, and the learned Sessions Judge by order dated 27th September, 1994 i.e. stated to have directed the Investigating Officer to produce the case diary on the next date fixed on 24th November, 1994, the learned Judge by his order dated 24th November, 1994 had confirmed to the interim bail granted to the accused Bejoy Mondal on the same terms and conditions merely because "there was no adverse report from the side of the prosecution against him." There is nothing in the said order to indicate that the Case Diary had been produced by the I.O. before the learned Judge and the materials therein had been perused and considered by him : The learned Judge clearly seems to have passed the aforesaid order dated 24th November, 1994 without due application of his judicial mind in the matter. He did neither dispose of the petitioner's application for cancellation of bail granted to the accused Bejoy Mondal for which the Case Diary was directed to be produced on 24.11.94. The order of the learned Judge dated 24.11.94 confirming bail to the said accused is also liable to be cancelled on that ground.

10. As already indicated, the prosecution and the Investigating Agency did not seem to seriously oppose the application for bail on behalf of the accused Bejoy Mondal when the bail petition on his behalf had been moved before the Learned Sessions Judge on 19th September, 1994, 10 days after the arrest and production before the Court, even though the relevant case, containing serious and grave allegations against the aforesaid accused, was in a very early stage of investigation. The confirmation of Interim Bail before the Sessions Court on 24th November, 1994 had neither been opposed on behalf of the prosecution submitting that there was no adverse report against the aforesaid accused. We wonder how bail could conceivably have been granted to the aforesaid accused in the nature of the relevant case and the grave allegations made against him in the F.I.R. itself. Even though the Petitioner-Informant had filed the instant application for cancellation of bail of the aforesaid accused on the ground that he is threatening him (Informant) and his family members for which several G.D. Entries had been recorded in the Bhangore Police station itself, the Investigating officer did neither consider it fit and proper to enquire into the allegations made in the aforesaid relevant G.D. Entries. And, without making any enquiry whatsoever on the said allegation, the I.O. in his report dated 12th January, 1995 stated that it is not necessary to cancel the bail granted to the accused Bejoy Mondal. The I.O. does not appear to be acting in the matter the way the law requires him to do. His conduct appears to be good deal less happy and far from satisfactory. The way the Prosecution and the Investigating Agency appear to be proceeding with the matter would at once seem to suggest that they are seeking to shield the said accused for reasons best known to them; which, however, appears to have been indicated in the aforesaid report of the I.O. himself stating therein that the accused Bejoy Mondal is the "LCM of CPM Party"; suggesting that the relevant case is not likely to be investigated in the manner it should be. Should the Court below feel at the time of submission of report in final form by the Investigating Agency that the relevant case, having regard to the nature and gravity of the allegations made therein and the specific allegations made against the accused Bejoy Mondal and others, had not been properly investigated, it shall pass appropriate orders according to law, in due exercise of its judicial discretion, for ensuring that the real culprits are brought to book for the offence alleged.

11. In the result, the Petitioner's application succeeds. The Interim Bail granted to the Opposite-Party No. 2-accused Bejoy Mondal by the Learned Sessions Judge by his order dated 19th September, 1994 in Criminal Misc. Case No. 4143 of 1994, which was confirmed by his subsequent order dated 24th November, 1994 be hereby cancelled. The said accused Bejoy Mondal is hereby directed to surrender before the Learned Sub-Divisional Judicial Magistrate at Alipore in connection with the relevant case within one week from, this date. On his failure to do so, the Learned Sub-Divisional Judicial Magistrate concerned shall issue Warrant of Arrest for his arrest and production before the Court for being detained in judicial custody in connection with the relevant case.

12. The Petitioner's application is, accordingly, disposed of.
 13. Let a copy of this Order be forthwith sent to the Sub-Divisional Judicial Magistrate at Alipore for his information and compliance.
 14. Let a plain copy of this Order, countersigned by the Assistant Registrar (Court), be made over to the learned Advocate for the Petitioner, as prayed for.
- S.N. Chakrabarty, J.
15. I agree.