
(2022) 05 CAL CK 0037
In the Calcutta High Court
Case No : C.R.M No. 6361 Of 2021

Md. Ferdaus

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 304, 304B, 306, 324, 352, 498A, 506
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 437, 437(5), 439(2), 482

Citation : (2022) 05 CAL CK 0037

Hon'ble Judges : Debangsu Basak, J; Bibhas Ranjan De, J

Bench : Division Bench

Advocate : Dipanjan Chatterjee, Kalyan Kumar Bhattacharjee, Reshmi Khatun, Arup Mandal, Sabir Ahmed

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Petitioner has applied for cancellation of the anticipatory bail granted by the Learned Sessions Judge, Birbhum on July 13, 2021 and the consequent order of bail passed by the Learned Magistrate on July 15, 2021 in favour of the private opposite parties Nos. 2 and 3.

2. Learned Advocate appearing for the petitioner has submitted that, the police commenced an investigation inter alia under Section 498A/304B/306/201/34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, 1961, inter alia against the private opposite parties. The police had filed a charge sheet on June 5, 2021 in respect of such investigation. The police had filed a supplementary charge sheet, inter alia, under section 302 of the Indian Penal Code on January 22, 2021. He has submitted that, the Learned Sessions Judge failed to appreciate the materials in the case diary while granting anticipatory bail to the private opposite parties. According to him, considering the seriousness

of the offence alleged and the materials in the case diary and given the contents of the charge sheets dated June 5, 2021 and January 22, 2022 when there is a charge of murder against the opposite parties Nos. 2 and 3, the Learned Sessions Judge should not have granted anticipatory bail to the private opposite party.

3. Learned Advocate appearing for the petitioner has submitted that, once police filed a charge sheet involving a graver offence, then, the Court ought to cancel the bail granted in favour of the accused. In support of his contentions, learned Advocate appearing for the petitioner has relied upon 2001 Volume 4 Supreme Court Cases 280 (Prahlaad Singh Bhati vs. NCT. Delhi and Another), 2008 Volume 1 Supreme Court Cases 474 (Hamida vs. Rashid Alias Rasheed and Others) and 2019 Volume 17 Supreme Court Cases 326 (Pradeep Ram vs. State of Jharkhand and Another).

4. Learned Advocate appearing for the State has relied upon a memorandum of evidence. He has also relied upon the contents of the case diary.

5. Learned Advocate appearing for the private opposite parties has submitted that, the Learned Sessions Judge did not err in granting bail to the private opposite parties. He has submitted that, the Learned Sessions Judge took into consideration the materials in the case diary, the age of the private opposite parties and the fact that, the police had filed charge sheet and therefore correctly held that, there was no necessity of further detention for custodial interrogation of the private opposite parties. The Learned Sessions Judge had granted anticipatory bail to the private opposite party on July 13, 2021. The order dated July 15, 2021 is the consequential order of the Learned Magistrate granting bail. He has submitted that, there are no infirmities in the two orders impugned by the petitioner requiring the interference of this Hon'ble Court under Section 439(2) of the Criminal Procedure Code. He has submitted that, the ratio of the decisions relied upon on behalf of the petitioners have no manner of application in the facts and circumstances of the present case.

6. Prahlaad Singh Bhati (supra) has dealt with the issue as to when, a Learned Magistrate exercising power under Section 437 of the Criminal Procedure Code can grant bail to an accused. It has observed that, the Learned Magistrate has to return a finding on a jurisdictional fact that the accused seeking bail before him is not involved in the offences of the nature that are specified under Section 437 of the Criminal Procedure Code prohibiting the Learned Magistrate from exercising jurisdiction of granting bail. It has observed that, if the punishment prescribed of the offence alleged is for imprisonment for life and death penalty and the offence is exclusively triable of the Court of Sessions, then the Learned Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached under Section 437 of the Criminal Procedure Code. It has observed as follows:-

"7. Powers of the Magistrate, while dealing with the applications for grant of bail,

are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction."

7. Hamida (supra) has considered the content and scope of power under Section 482 of the Criminal Procedure Code. In the facts of that case, the Magistrate had granted bail to an accused for alleged offences under Section 324, 352 and 506 of the Indian Penal Code on the same day that they were arrested and produced before him. Learned Magistrate had, however, clarified that if the case was converted into a more serious offence the accused would not get any benefit of bail granted by him. The victim had succumbed to injuries three days thereafter and the offence was converted into Section 304 of the Indian Penal Code. Instead of the accused filing an application for bail for the added section, the accused had filed a petition under Section 482 of the Criminal Procedure Code, seeking a direction on the Magistrate to permit the accused to remain on the same bail even after conversion of the offence into one under Section 304 of the Indian Penal Code. The High Court had allowed the petition under Section 482 of the Criminal Procedure Code. The Supreme Court had set aside such order.

8. Pradeep Ram (supra) has considered various issues including the following issue :-

"9.1.(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?"

9. Pradeep Ram (supra) has considered Prahlad Singh Bhati (supra) and Hamida (supra). In answering issue No. (i) Pradeep Ram (supra) has observed as follows :-

"29. In all cases, where the accused is bailed out under orders of the court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the court before granting permission to arrest an accused on the basis of new offences. The powers under Sections 437(5) and 439(2) are wide powers granted to the court by the legislature under which the court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the accused and to commit him to custody can only be passed by the court after cancelling the earlier bail."

10. It has further observed as follows:-

"31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3*. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail."

11. In the facts of the present case, the father of the victim had lodged a police complaint on March 7, 2021 alleging that, the victim was tortured by her in-laws both physically and mentally over the issue of dowry and that the victim was murdered on March 2, 2021. On the basis of the complaint of the father of the victim, the police registered a First Information Report being Bolpur Police Station Case No. 71/21 dated March 7, 2021 under Section 498A/304B/201/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act, 1961.

12. After obtaining the Post Mortem Report, the police had requested the doctor performing the post mortem for a specific opinion regarding death of the victim by letter dated April 14, 2021. By such letter, the police had wanted to know as to whether the death was suicidal or homicidal in nature. By a letter dated April 15, 2021, the doctor performing the Post Mortem Report had stated that whether the death was suicidal or homicidal nature cannot be opined unless the circumstantial evidence were examined. By another letter dated April 24, 2021, the doctor conducting the Post Mortem Report had answered three queries raised by police. In answer to the query as to whether there was any ligature mark around the neck and if so whether the ligature mark was continuous or non continuous, the doctor performing post mortem on the deceased stated that there was a ligature mark around the neck of the deceased which was non continuous.

13. The police had obtained the Post Mortem Report of the victim dated March 10, 2021. The Post Mortem Report of the victim has stated that the death was due to asphyxia resulting from compression of the neck, ante mortem in nature. The Police had submitted a charge sheet being Bolpur Police Station case No. 122/21 dated June 5, 2021 under Section 498A/304B/306/201/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act, 1961, inter alia against the private opposite parties. The de facto complainant had filed a petition on June 7, 2021 taking exceptions to the charge sheet submitted.

14. The private opposite parties had applied for and obtained anticipatory bail from the Learned Sessions Judge on July 13, 2021. The Learned Sessions Judge while passing the order dated July 13, 2021 had considered the materials in the case diary against the private opposite parties, the factum of filing of the charge sheet after submission of the investigation and observed that there was no necessity of custodial interrogation of the private opposite parties at such stage and after considering the fact that the private opposite parties are the parent-in-laws of the deceased and not the principal accused, proceeded to grant anticipatory bail to the private opposite parties. The Learned Magistrate, therefore, had passed the consequential order of grant of bail on July 13, 2021.

15. The Learned Magistrate by an order dated August 11, 2021 had allowed the application of the de facto complainant filed on June 7, 2021 taking exception to the charge sheet dated June 5, 2021 by directing further investigation.

16. Subsequent to the order dated August 11, 2021, the police had conducted further investigations. The police had recorded statement of the persons as noted in the order dated August 11, 2021. The police had filed an additional charge sheet on January 22, 2022. The police had filed such charge sheet inter alia under Section 302 of the Indian Penal Code.

17. The petitioner has assailed the order of grant of anticipatory bail by the Learned Sessions Judge on July 13, 2021 and the consequential order of the Learned Magistrate of granting bail on July 15, 2021 primarily on two grounds. The first of such ground is that, the Learned Sessions Judge had failed to take into account the gravity of the offence and the involvement of the petitioner therein. The second ground is that the police had filed a subsequent charge sheet involving a graver offence against the private opposite parties.

18. As on July 13, 2021 when the Learned Sessions Judge had passed the order of anticipatory bail, the materials in the case diary suggested that the death of the victim was suicidal in nature. Moreover, the Learned Sessions Judge had taken into consideration the relationship of the private opposite parties with the victim, the factum of filing of the charge sheet, the requirement on custodial interrogation of the private opposite parties in view of the filing of the charge sheet, and proceeded to grant anticipatory bail to the private opposite parties. It cannot be said that, the order of the Learned Sessions Judge is not informed with reasons nor can it be said that, the Learned Sessions Judge had misconstrued

and misappreciated the materials in the case diary then available at the time of passing of the order dated July 13, 2021. The application for exception to the charge sheet had been allowed subsequently on August 11, 2021. Subsequent to the order dated August 11, 2021 directing further investigations, the police had recorded statements. The police had thereafter filed the charge sheet dated January 22, 2022 involving Section 302 of the Indian Penal Code. Therefore, on July 13, 2021 it cannot be said that, there were materials in the case diary involving Section 302 of the Indian Penal Code which were not taken into consideration by the Learned Sessions Judge while granting anticipatory bail and that the Learned Sessions Judge had erred in granting the anticipatory bail.

19. The second ground that subsequent to the filing of the charge sheet dated January 22, 2022, the bail granted in favour of the private opposite party should be cancelled with deepest of respect, is without any basis. The parties are governed by the ratio Pradeep Ram (supra) and particularly those enumerated in paragraphs 31 thereof. The parties therefore, are at liberty to avail of their remedies as has been enumerated in paragraph 31 of Pradeep Ram (supra).

20. In view of the discussions above, we find no ground being made out for interference with the order granting anticipatory bail by the Learned Sessions Judge on July 13, 2021 and the subsequent order of the Learned Magistrate granting bail on July 15, 2021 in favour of the private opposite parties. Case diary be returned to the learned Advocate for the State.

21. CRM 6361 of 2021 is dismissed.

22. I Agree.