

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.31/2020**

Smt. Srabanti Bhowmik on behalf of accused
Sri Sumit Banik alias Bapi

----Petitioner(s)

Versus

The State of Tripura

-----Respondent(s)

For Petitioner(s) : Mr. A. Roy Barman, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

24/03/2020

Petitioner is the close relative of the accused against whom an FIR was lodged on 04.08.2019 for commission of offences under Sections 307 and 326 read with Section 34 of the Indian Penal Code (IPC, for short). Section 302 of IPC was added when the injured expired on 16.08.2019. The accused was granted bail by the Sessions Court upon which the Government had approached the High Court. The High Court by a judgment dated 18.02.2020 passed in Criminal Petition No.56 of 2019 and Criminal Petition No.57 of 2019 after detailed consideration, cancelled the bail order of the present accused and other co-accused involved in the said case. Just over a month later this regular bail application is filed.

Ordinarily perhaps this application should have been heard by the same learned Judge who had cancelled the bail of the accused. However, on account of spread of corona virus, the High Court is functioning at reduced strength. Every day one Single Judge handles all urgent cases. On account of such extraordinary

circumstances, I heard learned counsel for the petitioner on this bail application.

No changes in circumstances are pointed out since the High Court by a reasoned detailed judgment cancelled the bail of the accused on 18.02.2019. In the said judgment, learned Single Judge had made following observations:

"51. In an application for cancellation of bail the prosecution has to establish its case by showing preponderance of probabilities that the accused has attempted to threat or tamper the prosecution witnesses and not to establish the case beyond reasonable doubt which is necessarily the mandate of criminal justice delivery system.

52. Thus in the instant case, this Court finds that the eyewitnesses are under serious threat. There is also an observation made by the investigating officer that if the accused-person, namely, Omar Sharif is released on bail, there is every chance of his absconsion to Bangladesh to escape the trial. Besides Omar Sharif, the accused-persons, namely Sumit Chowdhury and Sumit Banik, hail from a very affluent family and the accused-person, namely, Sukanta Biswas himself is a Sub-Inspector of Police and needless to say, how powerful he is. Contrary thereto, the eyewitness, Basu Kar only owned a small pan shop. In Indian Criminal Justice Delivery System, there is no well-recognised mechanism to protect safety and security of the witnesses who are substantially related to justice delivery system. The Apex Court and various Courts in our country, time and again have observed that a witness can easily be owned over for various reasons, either under threat or by way of pressure by highly powerful person/persons for monetary gain.

53. I have noticed the order dated 11.11.2019 wherein the Addl. Sessions Judge, while rejecting the bail application, has observed that there are sufficient evidence/materials available in the final reports which, point towards the hypothesis of involvement of the accused-persons in committing murder of a Bank Manager in the heart of the City of Agartala. The learned Sessions Judge has further observed that the alleged offence can be said to be serious in nature and considering all aspects, the learned Sessions Judge, thought it inappropriate to grant bail to the accused-persons.

54. There is no reason to disagree with the said observation of the learned Addl. Sessions Judge. In the instant case, I find that the three accused-persons, namely Sumit Chowdhury, Sumit Banik and Sukanta Biswas had tried to suppress the evidence and initially, did not disclose the name of Omar Sharif as one of the assailants. Further, the weapon of offence and the wearing apparels of one of the accused-respondents were recovered on the basis of disclosure statement and based on interrogatories. Budhisatta, the deceased during his dying declaration has specifically disclosed the names of the accused-persons behind the cause of his sustaining severe injuries. The said dying declaration is well supported and corroborated by two eyewitnesses fortified by disclosure statement and electronic evidence. That apart, I find sufficient materials to come to a finding that the two eye-witnesses are under serious threat. They are already tensed and finally, in my opinion, considering the overall circumstances and the status of the accused-persons and the eye-witnesses, it would not be justified or conducive to release the accused-persons on bail for free and fair trial which is the ultimate goal of rendering justice. At this stage, this Court should not enter into further details of the case and I refrain myself from making any further

comments on the merit of the case. Impugned orders dated 03.12.2019 and 04.12.2019 passed by the learned Sessions Judge in connection with case No.ST (T-1) 103 of 2019 arising out of the West Agartala P.S. Case No. 2019 WAG 172 granting bail to the accused-persons are liable to be interfered with. The said orders passed by the learned Addl. Sessions Judge are not sustainable and suffer from the vice of non-application of mind rendering the said orders to be illegal for the reason that the learned trial Judge proceeded on some irrelevant materials on record without regard to the provision of Section 173(8) of CrPC. Learned trial Judge also failed to discharge his obligation and duty to take into account the evidence and other material circumstances and consequential impact affecting upon the prosecution case for granting of such bail and he completely lost sight of the basic principles of granting bail in a crime of this nature.

55. After due consideration of the entire episode and other ancillary circumstances, being *prima facie*, satisfied with the overwhelming corroborative evidence, substantially supported by other materials brought on record, the severity and gravity of the offence coupled with reasonable apprehensions of causing threat or tampering/influencing the witnesses, I deem it appropriate to cancel the impugned orders granting bail to the accused-respondents.

56. The learned Court below also has fixed a specific date for framing of charge. There is no prayer before the Court for "re-investigation" or "fresh investigation" or "de novo investigation" in the case in hand. Be that as it may, I direct the learned trial Court to frame charge in accordance with law on the next date and dispose of the case as expeditiously as possible, preferably within a period of six months from the date of the receipt of the copy of this order.

The accused respondents are directed to appear before the trial Court on all dates as fixed by learned trial Court and will assist the Court to complete the trial within the said period. I further direct that the accused-respondents are at liberty to file fresh application for bail before trial Court. Needless to say, that, if such applications are filed, the trial Court will consider the same on its own merit, untrammelled by any of the observation made by this Court.

57. In the result, the impugned orders dated 03.12.2019 and 04.12.2019, passed by the learned Addl. Session Judge in connection with the West Agartala P.S. Case No. 2019 WAG 172, granting bail to the accused-respondents, are set aside and quashed. Consequently, both the aforesaid petitions preferred by the State of Tripura praying for cancellation of said impugned bail orders are allowed. Further, I make it clear that observations touching the merits of the case against the accused are purely for the purpose of deciding the question of grant of bail."

If the accused is aggrieved by the said judgment his remedy lies elsewhere. A fresh application for bail within a short span of cancellation of the bail which was granted by the Sessions Court, without pointing out any change in material circumstances, cannot be entertained.

Learned counsel for the petitioner, however, pressed the ground of spread of corona virus and the threat it may cause to the accused. Without further material of overcrowding of the jails in the State and particularly, the jail in which the accused is presently kept, solely on this ground permanent bail cannot be granted. The prayer for grant of bail is, therefore, rejected.

Before closing few observations would be necessary. Firstly, it is expected that the State administration would take all necessary steps to ensure that there is no overcrowding of prisoners undertrial as well as convicts in the jails within the State. As an extraordinary situation, if it is found that the density of the prisoners in a particular jail is high and there are sub-jails within the State where the number of prisoners compared to the capacity of the centre is low, the administration may consider shifting some inmates to such sparsely populated sub-jails. Further, nothing stated in this application would prevent the accused from making separate application for temporary bail with supporting sufficient grounds and material.

Petition is disposed of.

(AKIL KURESHI), CJ