

(2009) 07 CAL CK 0012

Calcutta High Court

Case No: C.R.R. No. 1788 of 2009

Yasir Iqbal

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: July 15, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 307

Citation: (2011) 6 RCR(Criminal) 2063

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Syed Shahid Imarn and Mr. Shah Jahan Hossain, for the Appellant; Ashimesh Goswami, Ld. P.P., Mr. Sandipan Ganguly and Mr. Puspall Satpati for State, Mr. Sudipto Moitra, Tarique Quasimuddin, Zainal Tahan, Ms. Najmus Sahar, Ms. Sanchita Chaudhuri, Ram Narain Rajak and Mr. Md. Irhad Yaqub for O.P. No. 2, for the Respondent

Judgement

Ashim Kumar Roy, J.

In connection with New Market Police Station Case No. 101 of 2007, u/s 307 of the Indian Penal Code, the petitioner was arrested by the police on April 15, 2007 and on the very next day, i.e. on April 16, 2007 when he was produced before the Learned Chief Metropolitan Magistrate, Calcutta he was released on bail. The opposite party No.2 herein, the defacto-complainant moved the City Sessions Court, Calcutta for cancellation of bail, whereupon, the Learned Chief Judge, City Sessions Court cancelled the petitioner's bail.

Hence, this criminal revision against the order of cancellation of bail.

2. Heard the learned counsels appearing on behalf of the parties. Perused the Case Diary. Considered the case laws relied upon by them.

3. It is the submissions of the learned counsel of the petitioner that the learned Magistrate was fully justified in granting bail to the petitioner as the injury sustained by the defacto-complainant was simple in nature. He further submitted that after being released on bail the petitioner has never misused his liberty in any way whatsoever and as directed by this Hon"ble High Court he has been regularly meeting the Investigating Officer of this case, on every day, since May 19, 2009. According to the counsel of the petitioner while the petitioner reported to the Investigating Officer of the case he was thoroughly interrogated and his statement has also been recorded. Thus, he prayed that the impugned order whereby the petitioner"s bail was cancelled by the learned Chief Judge, City Sessions Court be quashed and he be permitted to continue on bail as granted by the learned Magistrate.

4. On the other hand, the learned counsel appearing on behalf of the defacto-complainant vehemently urged that the order of granting bail is wholly against the materials on record and accordingly, the learned Chief Judge, City Sessions Court very rightly set aside the same and cancelled the petitioner"s bail. He further submitted when the order of granting bail by itself is manifestly erroneous and illegal, the post bail conduct of an accused has no relevance. In support of his submission the learned counsel appearing for the opposite party No. 2 relied upon the following decisions;

(i) [State Vs. Amarmani Tripathi](#), (ii) Narendra K. Amin (Dr.) v. State of Gujarat & Anr., reported in (2008) 13 SCC 584, (iii) [Lokesh Singh Vs. State of U.P. and Another](#), (iv) Anil Kumar Tulsyani v. State of U.P. & Anr., reported in 2006 (3) All India CLR 609, (v) Anwari Begum v. Sher Mohammad & Anr., reported in (2005) 7 SCC 320, (vi) [Dinesh M.N. \(S.P.\) Vs. State of Gujarat](#), (vii) Gajanand Agarwal v. State of Orissa & Ors., reported in 2007 (2) Crimes 275 (SC), (viii) Brij Nandan Jaiswal v. Munna Jaiswal & Anr., reported in 2009 (1) Crimes 153 (SC), (ix) [Gobarbhai Naranbhai Singala Vs. State of Gujarat and Others](#), (x) State of Maharashtra Etc. v. Dhanendra Shrirarn Bhurle Etc., reported in 2009 (2) Supreme 17, (xi) Nirupama Choudhury v. State of West Bengal & Anr., reported in 2007 (2) CHN 879.

5. According to him the order impugned does not deserve any interference.

6. The learned Public Prosecutor produced the Case Diary and supplemented the contention of the learned lawyer of the defacto-complainant, submitting that the nature of injury suffered by the defacto-complainant clearly attracts the offence punishable u/s 307 of the Indian Penal Code and as such the Learned Magistrate was not justified to grant bail to the petitioner on the very first day of his production in Court. The learned Public Prosecutor further submitted that during the course of investigation, the petitioner was thoroughly interrogated by the police and his custodial interrogation is no more necessary. According to him the investigation is almost complete and charge-sheet will be submitted very shortly.

7. Now having considered the materials available from the Case Diary and the statement of the defacto-complainant, the injured herself and the witnesses, who were present at the time of alleged occurrence, I have no doubt that the findings of the learned Magistrate is totally against the materials on record and wholly erroneous. The conclusion of the learned Magistrate as regards to the offence committed by the petitioner on the face of the materials is not correct. I find that the victim was assaulted by the present petitioner with an iron rod on her head and such injury was repaired by as many as 14 stitches. I further find from the statement of the witnesses recorded u/s 161 of the Code of Criminal Procedure that the accused pounced on the injured saying that he would kill her. It was the further statement of the witnesses at that time the accused was also carrying a knife but could not use the same due to the timely intervention of the local residents. As such, even if, it is found that the nature of injuries suffered by the victim are simple in nature that does not mean the offence u/s 307 of the Indian Penal Code would elude. In a case where the allegation is one of attempt to commit murder, it is not essential that the bodily injury capable of causing death should have been inflicted, but the intention of the accused would be the deciding factor. Necessarily the nature of weapon used, the portion of the body where the injuries were inflicted coupled with the overt act in execution of the offence ought to be taken into consideration irrespective of its result. Merely because the injuries inflicted on the victim are simple in nature that cannot take the case out of the ambit of offence punishable u/s 307 of the Indian Penal Code.

8. Indisputably, it is always open to a Superior Court to reverse any order of granting bail to an accused by any subordinate Court and cancel the same when it is found that such order of granting bail is vitiated by complete misconception of law or misreading of materials on record or on a wrong assumption. In such a situation, absence of supervening circumstances is of no significance. In the instant case, the reason assigned for granting bail, in my opinion, is also not correct. However, in view of the fact already two and half months have been elapsed from the date of granting bail to the petitioner and when admittedly the petitioner is no longer required by the Investigating Agency for the purpose of custodial interrogation and according to the submissions of the learned Public Prosecutor, the investigation is almost complete and charge-sheet is likely to be filed very shortly, even though order of granting bail is not proper and erroneous, still I am of the opinion, at the present stage there will be no justification to uphold the impugned order, whereby the petitioner's bail has been cancelled by the learned Chief Judge, City Sessions Court, Calcutta. It is also pertinent to note neither the State nor the defacto-complainant before this Court expressed any apprehension about the likelihood of petitioner's absconson or of tampering with the evidence. Accordingly, the impugned order whereby the learned Chief Judge, City Sessions Court, Calcutta cancelled the petitioner's bail is set aside and the order passed by the learned Chief Metropolitan Magistrate, Calcutta on April 16, 2007, granting bail to him is restored,

however subject to the condition that the petitioner shall attend the concerned police station thrice in every week until further order.

9. However, the Court below is directed to supply the copy of the police papers to the accused within a month from the date of submission of charge-sheet and shall make all endeavours to commence the trial within two months thereafter and conclude the same as expeditiously as possible. The Court shall proceed with the trial on day to day basis and must not grant any adjournment to either parties unless granting of adjournment is found necessary for ends of justice.

Criminal section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.