

21.02.2022
Court No.13
Item Nos.4 & 5
AP

WPA 1722 of 2022

Rajib Paul

Vs.

The State of West Bengal and Ors.

With

CRR 1704 of 2021

With

CRAN 3 of 2022

Rajib Paul

Vs.

The State of West Bengal and Anr.

(Through Video Conference)

Mr. Rajdeep Majumder
Mr. Sourav Chatterjee
Mr. Srijib Chakraborty
Mr. Moyukh Mukherjee
Mr. A.K. Mukherjee
Mr. Pritam Roy
Mr. Sakti Halder
Mr. Amrit Sinha
Mr. A. Bazaz

... For the petitioner in WPA 1722 of 2022
& CRR 1704 of 2021.

Mr. S.N. Mookherjee, A.G.
Mr. Anirban Ray, G.P.
Mr. Raja Saha
Mr. Debasish Ghosh

... For the State in WPA 1722 of 2022.

Mr. Saswata Gopal Mukherjee, P.P.
Mr. Rudradipta Nandy

... For the State in CRR 1704 of 2021.

Mr. Debasish Roy, Senior Advocate
Mr. Jaydeep Biswas

... For the Opposite Party No.2
in CRR 1704 of 2021.

1. On the 12th of July, 2021, Haldia Police Station Case No. 80 of 2021 under Sections 341, 384, 506 and 120B of the Indian Penal Code was registered. The principal accused in the said F.I.R. is one Shyamal Adak. The writ petitioner Rajib Paul was a co-accused. The complainant Sk. Mobarak Ali, had stated that sometime in the year 2018, the said Shyamal Adak use to collect by extortion a sum of Rs. 100 per truck to allow loading of coal at the Haldia Dock Complex. The payment was received and recorded in a slip issued by the said Shyamal Adak and his associates inside the trade union office of the dock complex. On one such instance, the petitioner failed and refused to make payment, following which he was not allowed to load his truck with coal. The Petitioner was allowed to load his truck only after forking out of the said sum of Rs. 100. Due the pressure and intimidation by the said Shyamal Adak and his associates, the consignees stopped hiring the complainant which crippled his transport business.

2. The F.I.R. was registered at 10.35 pm, about 2 and half years after the incident. The date of occurrence is not mentioned. The writ petitioner applied for bail before the Magistrate and the same was allowed on the 19th of July, 2021. Ex-facie appears to this Court that the said order granting bail was passed in a slipshod manner even without consulting with the case diary.
3. On 28th of July, 2021, the Investigation Officer (IO) applied for cancellation of bail stating that the petitioner was threatening witnesses. The Magistrate recorded in detail the omissions of the IO, inter alia, in not issuing notice under Section 41A of the CrPC. It was also found that the statements of the witnesses recorded under Sections 161 and 164 CrPC did not indicate any such threat or intimidation. Prayer for recording statements under Section 164 was not made, which has also been recorded. The Magistrate strangely however went on to find that the petitioner was guilty of threatening such witnesses. Hence, the petitioner's bail was cancelled on the 28th of July,

2021. The order of the Magistrate is set out hereinbelow :-

“ Ld. Advocate on behalf of the accused moved this application praying for time and adjournment of the hearing.

The ground shown in his application is found irrelevant and thus the prayer for time of the hearing of the application is rejected.

Now, the record is taken up for hearing of the petition filed on behalf of the prosecution praying for cancellation of bail of accused namely Rajib Pal.

Heard Ld. APP at length.

Heard Ld. Advocate for the accused person.

The I/O is present before this Court in person along with the C.D.

The main contention of the I/O's prayer for cancellation of bail is as follows:-

- 1) Accused Rajib Pal is still continuing variety crimes in updating manner.
- 2) That, after getting bail from this Court, the accused person threatened the witnesses and the complainant as well for which the matter has been entered in the G.D.E. vide Haldia P.S. G.D.E. No. 843 dated 22/07/2021 and 907 dated 23/07/2021;
- 3) The accused is intentionally violating condition of bail.

There is also another point highlighted by the I.O that during the hearing of bail petition of the accused person, the case diary, the seizure list and other valuable documents have not been called for by this Court to understand the link between the accused and the commencement of the crime. The I/O has mentioned that enlarging the accused on bail has affected the entire investigation.

Surprisingly, stating above points the I/O in his prayer portion made prayer for revocation of bail permission granted to Rajib Pal.

During hearing, Ld. Advocate on behalf of the accused referred judgment reported in 1991 CriLJ 1422 and submitted that mere on the basis of lodging diary by the de facto complainant and witness bail granted to the accused cannot be cancelled. It is submitted further by Ld. Advocate that the accused person has extended his cooperation till date as the I/O himself did not lodge any diary against the accused. The prayer for cancellation of bail is purely motivated and unlawful.

Ld. APP during his submission referred judgment reported in 1952 CriLJ 213 (Mad.) and AIR 1978 SC 961 and submitted that the accused person has misused the liberty and tried to influence the witnesses by lodging threats against them. Since he has violated the condition of bail, the bail is liable to be cancelled and he should be taken into custody till the completion of investigation.

After going through the case record, the application for cancellation of bail, the material available in the case diary and also hearing Ld. Advocate for both sides as well as going through the reported judgments referred by the respective parties. I find that there are several latches and lacunae left by the I/O during his investigation at his initial stage. I do not find that the I/O has ever filed any notice u/S. 41A of the Cr.P.C. which is necessary for a case like this. I have also gone through the case record which shows that the seizure

list was made after granting bail to the accused and thus the I.O's statement regarding non-consideration of seizure list prior to granting bail is baseless and statement showing disrespect to the Court.

On further perusal of the case diary and the case record, it appears that the I/O ha conducted search and seizure for the first time on 21/07/2021, two days after the accused was enlarged on bail. The I/O has prayed for recording statement of witnesses, namely Sk. Saifuddin Ali and Sk. Sabir Ali ON 23/07/2021 and their statements has been recorded accordingly. The record reveals further that another witness namely, GunadharBera also turned up before this Court for recording his statement u/S. 164 of the CrPC on 28/07/2021, on perusal of the record I do not find any prayer for recording statement u/S, 164 of CrPC of the de factor complainant namely, Sk. Mobarak Ali. The Seizure List as lying in the record shows that several documents have been seized from the accused Rajib Pal on 21/07/2021 on his production.

On perusal of the case diary, it appears from the extract copies of G.D. entry of the de facto complainant namely, Sk. Mobarak Ali and witness Sk. Sabir Ali, which indicates that the accused during his enjoyment of liberty granted in this case lodged a threat and tried to influence the witnesses through the statements of the witnesses recorded u/S. 164 of the Cr.P.C and 161 of the Cr.P.C does not reflect so.

However, considering the extent of the alleged offence and the considering he volume of seizure, I find that the investigation as extending covering many people and their involvement and during the enjoyment of liberty, the accused persons has lodged threat to the de facto complainant and witnesses, the matter cannot be taken lightly.

Considering the fact of lodging threat to the de facto complainant and witnesses, I think the accused person has misused his liberty.

In view of the above, in my opinion, the prayer of the prosecution for cancellation of bail is justified and attracts S. 437(5) of the CrPC. Accordingly, the bail granted to the accuse don the 19/07/2021 is cancelled and the surety is directed to procedure the accused on 29/07/2021 so that he can be taken into custody; in default, the warrant of arrest shall be issued.

The matter be informed to the S.D.P.O. Haldia, Addl. S.P., Haldia for their information regarding disrespectful statement of the I/O in his application, so that such thing does not repeat in future.

To 29/07/21 for producing of the accused by surety.”

4. The order of cancellation of bail was challenged before the Ld. Addl. District and Sessions Judge who initially passed an order of stay. The Sessions Judge found that there was no prayer for custodial interrogation and no chance of the accused fleeing

from custody. The Ld. Judge expressed deep dissatisfaction at the manner in which the IO has conducted the investigation. The order of Stay was vacated and the order of the ACJM dated 28th of July, 2021 was confirmed. The relevant part of the Order of the Sessions Judge is set out below.

“I am also of the humble view that in our criminal justice dispensing system when there is no scope of the accused to produce some documents or evidence in his favour to the Investigating Officer for the purpose of proving his/her innocence and it is only the Investigating Officer who exercises unfettered discretionary power to collect evidence of his choice against the accused, then it is to be taken for granted that the materials available in the case diary against the accused are sufficient evidence against the accused during the pre-trial stage i.e at the stage of investigation.

Though the Investigating Officer of this case in his prayer for cancellation of ban (dt. 27.07.2021) of the accused-petitioner, on the basis of which the impugned order had sprang up, did not specifically say, inter alia, that a custodial interrogation of this accused/petitioner is necessary or did not specifically say that there is every chance of the accused of fleeing away from the jurisdiction of this Court or from India, but, the gravity of the statements of the Investigating Officer concerned as stated in the said application to this effect that ‘During the time if bail of the accused/petitioner by the Ld. Trial Court on 19.07.2021 the concerned case diary, seizure list and other valuable documents was not called for and therefore, the clear link in between the accused and the commencement of crime has not come to the knowledge of the Ld. Trial Court at the time of consideration of bail’ cannot be whisked away and should not be taken lightly.

The reply of the Ld. Public Prosecutor (In-charge) with regard to the point of inordinate delay of filing the FIR due to overwhelming fear of the de facto complainant appears to be more digestible than that of the submission of the Ld. Lawyer for the accused/petitioner, at this stage of investigation and the FIR story is also speaking in this regard.

Though the FIR story reveals some allegations of the nature which apparently comes within the ambit of Section 384 IPC, but when the Investigating Officer and the prosecution is seeing an opportunity to probe into the matter very seriously to unearth the truth by saying that the allegations made in the FIR is simply the ‘peck of a big Iceberg’ for which a custodial interrogation of this accused/petitioner is a must then I find no justifiable reason to stand on the way of such positive attempt of the Investigating Officer concerned particularly when the materials already in the case diary is speaking about huge quantity of unwarranted and

illegal monetary transactions (i.e. 'Tola' as submitted by the Ld. Lawyer for the prosecution) involving a good number of persons. It is also to be kept in mind that even there being some glaring latches and mistakes on the part of the Investigating Officer, at this very nascent stage of investigation the same cannot itself be sufficient to prevent the truth to come out.

Thought the Investigation Officer concerned should have been more vigilant by probing into the contents of the General Diaries which were lodged at the instance of the de facto complainant and though he should have issued notice under Section 41A Cr.P.C., which was very much necessary for a case like this and though the Investigating Officer concerned was sometime very reckless with regard to the information given to the Ld. Trial Court (as it appears from the order dt. 28.07.2021 passed by the Ld. Trial Court), but I think that some incapacity of the Investigating Officer concerned or his inept gesture in the matter of his probing into this case cannot itself justify a safe shelter or a safe passage of the accused/petitioner when there are some materials in the case diary and I think that in order to give the investigating agency an opportunity to probe into the matter, a chance may be given even to the Investigating Officer even by taking the accused/petitioner in custody for the purpose of collecting and/or seizing more documents for greater public interest, particularly in view of the alleged threat to the de facto complaint by the accused/petitioner and the consequent lodging the General Diaries against his, which tantamount to the misuse of liberty. In this context, I think that it would not be out of mark to say that when the accused/petitioner by preferring any application did not say that there was previous enmity or animosity in between his and the Investigating Officer then we should not presume that the Investigating Officer preferred the application for cancellation of bail (through the prosecution) simply because of some previous grudge etc. and hence, it may be presumed that the evidence collected by the Investigating Officer against the accused in the mean time, i.e. at this pre-trial stage which are reflected in the case diary, were not tinted with any bias etc.

So, considering all the facts and circumstances, I am of this view that the Ld. Trial Court being the Court of Ld. Additional Chief Judicial Magistrate, Haldia passed the order impugned dt. 28.07.2021 after due judicial deliberation and on keeping a birds eye view over the entire aspect and I find no reason to meddle with the said order and/or to intervene with the same. There being no apparent no perversity or illegality in the said impugned order, I think the same should stand as it is.

Hence, it is..."

5. The petitioner filed CRR 1704 of 2021 on 24th August, 2021. Upon the application being moved, a Coordinate Bench has stayed the order of the ACJM for 6 weeks. The principal ground was that the IO did not serve notice under Section 41A, which has

also been found by the Sessions Court. The IO was granted liberty to interrogate the petitioner. The petitioner was debarred from leaving Haldia without the permission of the IO.

6. In the meantime, the principal accused in the FIR, one Shyamal Adak, had filed a writ petition being W.P.11741 of 2021 (***Shyamal Adak Vs State of West Bengal and Ors***) before this Court challenging the said proceedings and seeking transfer of the said proceedings in FIR No. 80 of 2021. By orders dated 14th September, 2021 and 25th November, 2021, the petitioner therein (Shyamal Adak) was granted protection of this Court against any coercive action. The interim order was challenged by the State before the Hon'ble Supreme Court in SLP (Criminal) No. 9633 and 9634 of 2021. By an order dated 10th January, 2022, the Hon'ble Supreme Court has dismissed the SLP of the State remanding the matter back to this Court.

7. Coming back to the instant case, on the 11th of January, 2022, the IO in FIR 20 of 2021 made application before the ACJM, Haldia to include

Sections 411, 414, 409, 420 and 477 of the IPC. It was stated that in the course of investigation, certain facts had emerged which warranted inclusion of the said Sections. The IO stated as follows in his application:

“During investigation of the case, it has been learnt that, accused Shyamal Kumar Adak used to receive money collected from issuing slips from Bandar Sramik Bhaban and have kept the money in concealment somewhere or somehow. The PO, i.e. Bandar Sramik Bhaban was the office of ‘Nationalist HDC (CPT) Thika Sramik Mazdoor Union’. Accused Shyamal Kumar Adak was the working president of that union and they used to pay rent for the bidding to HDC, i.e. it can be said that accused Shyamal Kumar Adak was entrusted as an agent of the Bandar Sramik Bhaban for welfare of labours of HDC. But he used that property for his personal gain and committed criminal breach of trust in respect of that property. The money collected from issuing slips was not included in the accounts Nationalist HDC (CPT) Thika Sramik Mazdoor Union, i.e. accused Shyamal Kumar Adak wilfully omitted keeping accounts of collected money from issuing slips at Bandar Sramik Bhaban. Under the above, sections 411/414/409/420/477A of IPC is befitting the case. Under the above noted circumstances, I therefore pray before the honour’s Court that sections 411/414/409/420/477A IPC may kindly be added in this case and kind order may kindly be passed in this regard as your honour’s Court deems fit.”

8. The writ petition was affirmed on 31st of January, 2022, inter alia praying for the quashing of the FIR and alternatively for transfer of the investigation to the CBI. It was listed before this bench.
9. On the 20th of February, 2022, the CRR No. 1704 of 2021 came to be listed before a Coordinate Bench that expressed displeasure about the manner in which the ACJM granted bail in the first place on 19th July, 2021. It was however found that the

Public Prosecutor had submitted that the writ petitioner was already enjoying the interim order for a period of time and hence warrant of arrest issued by the Magistrate pursuant to cancellation of bail has been diluted. The Coordinate bench refused to extend the interim order of stay and released the CRR for being heard along with the instant writ petition. After release of the matter by the Coordinate Bench, CRR No. 1704 of 2021 has been assigned by the Hon'ble Chief Justice for being taken up along with the present writ petition.

10. On the very same day i.e. 20th of January, 2022, the Ld. ACJM allowed the IO's prayer for addition of Sections 411,414,409,477A of the IPC to the FIR. Since the interim stay was vacated by the Coordinate Bench at about 12 pm that day, the IO arrested the writ petitioner at about 1 pm.
11. Mr. Rajdeep Majumdar, Advocate for the petitioner, Mr Anirban Ray, Advocate for the State in the Writ Petition, Mr Debashish Rai, Senior, Advocate, for the de facto complainant and Mr SG Mukherji, Advocate for the State in the Revisional application,

have made detailed submissions on behalf of the respective parties. I have carefully considered the same.

12. As already noticed by the Sessions judge and the Coordinate benches, the delay in lodging of the FIR is curiously stark and blatant. The crime in the form of extortion by “Syndicate” (mafia) Operations was going on unabated since 2018 if not earlier. Such Syndicates operate in every nook and corner of the State. The selective cognizance in this case and the delay of two and half years in lodging of the FIR and the timing thereof i.e. particularly after the Assembly elections in the year 2021, throws up serious questions as regards the motives behind the investigation.

13. Admittedly, the writ petitioner is a co-accused who has been living in Haldia, Purba Mednipur, and has not left the State since his original bail was granted on 19th July, 2021. There is absolutely no evidence produced before the Court by the State that the petitioner is threatening or intimidating any witnesses. A blank statement by the IO cannot

compel this Court to infer anything that the complainant might want. The IO has not stated that the accused might abscond nor has any apprehension been found to that effect.

14. Admittedly, notice under Section 41A was never issued to the petitioner. This is in direct violation of the decision of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273**. The bail could not and should not have been cancelled. The petitioner could not therefore have been arrested.
15. The arguments of the writ petitioner that the inclusion of fresh charges under Sections 414, 409, 420 and 477 of the IPC is aimed at frustrating the liberty of the petitioner and frustrating CRR 1704 of 2021 may sound slightly incredible, but cannot be completely ruled out in light of the facts of the case.
16. After cancellation of bail, the petitioner obtained interim relief from this Court in CRR 1704 of 2021. The main accused was similarly granted relief earlier in WPA 11741 of 2021. The Hon'ble Supreme Court did not interfere with the interim

order and directed the appellant State therein, to approach the High Court and have the writ petition no. 11741 of 2021 heard and disposed of.

17. On the very next day i.e. 11th January 2022 the State filed an application for addition of charges. The petitioner surrendered afresh and sought for bail. On 13th December, 2021, another Coordinate Bench refused extension of the interim order at about 12.00 pm. The writ petitioner was arrested in his house at 1.00 pm on the same day. The turn of events indicated above and the timing are rather curious and betray the real purpose and motive behind the proceedings, i.e. to keep the accused in custody, by hook or by crook. The other motive is also clearly evident i.e. to frustrate the Revisional application itself and to render otiose all orders passed in the CRR, particularly the stay that was extended as many as 6 times by different benches. Prima facie, therefore, the conduct of the IO and the State in obtaining the order to include additional charges is suspect.

18. The IO had indicated that additional facts have emerged in the course of investigation which required additional charges. The additional facts are that the petitioner who is an associate of the principal accused used to illegally extort and collect sums of money and issue slips to allow transporters to load coal onto vehicles. Loading cannot take place unless a slip is produced. The slip is issued at the rate of Rs.100/- per truck. The principal accused Shyamal Adak is stated to have used the office premises of the Trade Union to conduct the aforesaid extortion. It is additionally submitted by the IO that ingredients of S. 409 have emerged in that the sums of money collected were not put into the account of the Trade Union. Such statement of the IO goes to suggest that the taking of money from truck holders is lawful, thereby negating the allegation of extortion. The statements of the IO are contradictory and self defeating. The Ld. Sessions Judge had failed to take note of the same.

19. Coming to the arguments of the State and the de facto complainant, this Court cannot accept that the

Writ Court under Article 226 cannot come to the aid of a person that appears to be victimised by the State. A petitioner cannot be held guilty of forum shopping if he is trying to protect his liberty under Article 226 of the Constitution. A petitioner under law is entitled to take any and every possible measure to secure liberty.

20. Mr. Roy appearing on behalf of the de facto complainant has submitted that merely because CRR 1704 of 2021 has been assigned before this Bench, it would not mean that the High Court can sit in appeal over the findings of the ACJM and the Sessions Court or even the Coordinate bench. It is also argued that there is no prayer for interim order or prayer for stay of operation of the interim order. The argument is ridiculous, preposterous and baseless. While considering extension of interim order passed by another bench, a court is required to consider on its own as to whether it should be extended further. This cannot and does not amount to sitting in appeal over the order of the Coordinate bench.

21. The Ld. Sessions judge has already noted in his order dated 6th of February, 2021, the casual and cavalier manner in which investigation was being carried out by the IO. The order of the Sessions Judge has already been set out hereinbelow.

22. It is clearly evident from the order of the Sessions Judge and the spirit and tenor of the orders of the Coordinate benches that, the State, the IO, and the ACJM in this matter have been acting casually and investigation into a serious matter of this nature is not being conducted effectively. The main accused in the matter is enjoying protection from coercive measures. The Case diary does not show any serious progress in investigation. The main accused has not been interrogated effectively till now. The petitioner who was on liberty since July 2021 has not been summoned for investigation. From the affidavit of the IO (called for by the Coordinate bench), the justification for custodial interrogation is not satisfactory. The accused has not been interrogated for over 7 months since 17th of July, 2021. The sudden need for custodial interrogation is

therefore suspiciously vague and motivated. The IO only appears to be over-zealous in taking the accused into custody. The need for interrogation of the other accused is not indicated by the State. The IO and ACJM have reduced the investigation to a mockery.

23. As already discussed hereinabove, "Syndicates" have a stranglehold on most businesses and commerce in the State, be it in the trade of Construction material or as in the instant case the loading and unloading of cargo, moving in and out of the Haldia Port.

24. The investigation is being carried out in a perfunctory manner. The faith of the public at large in such investigation could be eroded. There is therefore strong and prima facie case made out for transfer of the case from the State to the CBI.

25. For the above reasons and applying the tests laid down by the Supreme Court inter alia in the cases of **State of West Bengal Vs Committee for the protection of Democratic Rights, reported in (2010) 3 SCC 571, Mithilesh Kumar Singh Vs**

State of Rajasthan reported in (2015) 9 SCC 795

and **Pooja Pal Vs. Union of India** reported in **2016**

3 SCC 135, this Court is of the prima facie view

that the investigation needs to be transferred from

the Haldia Police to the Central Bureau of

Investigation.

26. The Government Pleader, Mr. Ray, has prayed that instead of CBI, a Special Investigation Team (SIT) may be entrusted with the investigation. This cannot be acceded to because the Haldia Port attracts traffic from many countries and has a huge hinterland comprising in many states in eastern India.

27. The investigation by the State Police at Haldia shall remain stayed. The petitioner shall be released from custody and shall not leave Haldia town, without the leave of this Court. The CBI shall collect all the case material including case diary and all evidence from the Haldia Police and commence investigation. Final report shall not be filed by the CBI without the leave of this Court. This order is passed since the Court has perused the entire case diary, pleadings

in the Revisional application and the writ petition carefully and has heard the State, the de facto complainant and the Petitioners at length over 3 days. There is strong prima facie case made out and the balance of convenience is in favour of protecting and preserving the case material.

28. Let affidavit in opposition be filed within a period of 4 weeks and reply, if any, within 2 weeks thereafter. Let the matter be listed for hearing 6 weeks hence.

(Rajasekhar Mantha, J.)