

[2012] 1 S.C.R. 829

SUSANTA GHOSH

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v.

STATE OF WEST BENGAL.
(Criminal Appeal No. 310 of 2012)

FEBRUARY 03, 2012

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[ALTAMAS KABIR AND GYAN SUDHA MISRA, JJ.]

Bail:

Death of seven persons - Three FIRs lodged earlier - Appellant, a member of Legislative Assembly not named in the three FIRs - Named in the fourth FIR lodged after 9 years - Allegation against appellant that he entered into a criminal conspiracy with other accused persons in order to cause deaths of seven victims who were allegedly members of political party - Bail application - Rejected by High Court - On appeal, held: Appellant's prayer for bail is allowed - There was no mention of the appellant's name or alleged role in the incident in the three FIRs - Appellant was arrested in connection with a FIR lodged 9 years after the incident - During all these years there was no allegation that he had interfered with the investigation - Furthermore, in connection with this case he was also granted anticipatory bail - There was nothing to indicate that such privilege was either abused or misused by the appellant - Tampering with the evidence or the investigation is no longer relevant since charge-sheet has already been filed in the case - Since appellant is a sitting MLA, the possibility of his absconding is remote - Appellant be released on bail to the satisfaction of the trial Court subject to conditions as imposed by trial court.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 310 of 2012.

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A From the Judgment & Order dated 29.9.2011 of the High Court of Calcutta in C.R.M. No. 7982 of 2011.

Ajay Sharma for the Appellant.

B Kalyan Bandopadhyay, Abhijit Sengupta for the Respondent.

The Order of the Court was delivered by

O R D E R

C **ALTAMAS KABIR, J.** 1. Leave granted.

2. This Appeal is directed against the judgment and order dated 29th September, 2011, passed by the Division Bench of the Calcutta High Court in C.R.M. No.7982 of 2011, which
D was an application for grant of bail under Section 439 of the Criminal Procedure Code, hereinafter referred to as "Cr.P.C.", in connection with Anandapur Police Station Case No.36 of 2011, dated 6th June, 2011, under Sections 147, 148, 149, 448, 326, 307, 302, 506, 201 and 120-B of the Indian Penal
E Code read with Sections 25 and 27 of the Arms Act, corresponding to G.R. Case No.1364 of 2011, pending before the learned Chief Judicial Magistrate, Paschim Medinipur. The Appellant had moved the High Court for bail against the order
F dated 20th August, 2011, passed by the Chief Judicial Magistrate, Paschim Medinipur, rejecting his prayer for bail and remanding him to jail custody.

3. The Appellant is an elected Member of the West Bengal Legislative Assembly. His prayer for bail is based mainly on the ground that on account of political vendetta he has been
G named as an accused in a First Information Report which was lodged on 5th June, 2011, in respect of an incident which occurred on 22nd September, 2002, and in respect whereof three separate FIRs had been lodged, two on the date of
H incident itself and one on 26th September, 2002, in which he had not been named. The first FIR was lodged by one Nemai

SUSANTA GHOSH v. STATE OF WEST BENGAL 831
[ALTAMAS KABIR, J.]

Ch. Sarkar, which was recorded as FIR No.59 dated 22nd September, 2002 of Keshpur PS, Paschim Medinipur, under Sections 148, 149, 307 and 302 IPC read with Sections 25, 27 and 35 of the Arms Act as also Section 9(b) of the Indian Explosives Act.

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4. The second FIR was lodged by one Shri Debashish Roy, the Station House Officer of Keshpur Police Station, on the same day and in respect of the same incident, which was recorded as FIR No.60 dated 22nd September, 2002, under similar provisions.

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5. The third FIR was lodged by the daughter of the deceased, Smt. Chandana Acharya, which was recorded as Keshpur PS Case No.61 dated 26th September, 2002, under Sections 148, 149, 448, 326, 307, 364 and 506 IPC read with Sections 25 and 26 of the Arms Act.

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6. As will be apparent from the three FIRs, the first two related to the incident in which seven persons, including the father of the third complainant, Ajoy Acharya, were killed at Piyasala Village and their bodies were removed to and buried at Daser Bandh, Keshpur. As indicated hereinabove, in none of the above FIRs was the Appellant named, nor was he included in the charge-sheets which were filed.

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7. The cases which arose out of the first two FIRs in which charge-sheets were filed under Sections 148, 149, 302 IPC and also under Sections 448, 364 and 506 IPC, ended in acquittal of the accused persons who were alleged to have committed the offences complained of. The third case is, however, still pending trial before the learned Additional Sessions Judge, Paschim Medinipur.

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8. From amongst a number of skeletons which were recovered from a grave in Daser Bandh, Keshpur, one of the skeletons was identified by one Shyamal Acharya, the younger son of the deceased, on the strength of the clothes which were

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A recovered, together with a set of teeth, which were identified
to be that of the deceased, Ajoy Acharya. It is thereafter that
the fourth FIR was lodged by Shri Shyamal Acharya, being
Anandapur P.S. Case No.36 of 6th June, 2011, in which 40
B persons were named as accused and the name of the
Appellant was shown at serial No.2 and it was alleged that he
had entered into a criminal conspiracy with the other accused
persons in order to cause the deaths of the seven victims, who
were allegedly members of the Trinamool Congress. It was
C further alleged that a peace meeting had been held prior to the
incident and the victims were returning to their homes upon the
assurance that had been given in the meeting that peace would
be maintained by the local villagers. The further allegation was
that under the directions of the Appellant, the seven victims were
targeted and dragged out of their homes and were killed upon
D his instructions. Thereafter, the bodies were carried to different
places and ultimately buried at Daser Bandh in Keshpur, from
where the skeletons were recovered.

9. Mr. Ranjit Kumar, learned Senior Advocate, who
appeared on behalf of the Appellant, Mr. Susanta Ghosh, urged
E that with the change in the Government in the State of West
Bengal, the Appellant, who is a M.L.A. of the Communist Party
of India (Marxist) and a former Minister, is being targeted after
an interval of nine years in order to discredit and humiliate him
and to adversely affect his political career. It was further
F submitted that nothing prevented the prosecution or even the
heirs of the victim, including his daughter, Smt. Chandana
Acharya, who had earlier lodged FIR No.61 dated 25th
September, 2002, or the younger son, Shri Shyamal Acharya,
who had lodged the fourth FIR, from coming out with the
G allegation against the Appellant earlier. Mr. Ranjit Kumar
submitted that not only was the delay in lodging the FIR, in which
the Appellant was indicted, fatal to the prosecution case, but
gave rise to a strong suspicion that it was motivated. Mr. Ranjit
Kumar also submitted that before the Division Bench of the
H Calcutta High Court, the Appellant had been granted the benefit

of anticipatory bail which was subsequently not extended by the learned trial Judge, who remanded the Appellant to police custody, and, thereafter, bail has been refused. A

10. Mr. Ranjit Kumar submitted that the parameters for grant of bail have been laid down by this Court in various cases and this Court has indicated as to when bail could be refused in respect of cognizable offences, such as, if there were : B

- (i) chances of tampering with the evidence;
- (ii) chances of interfering with the investigation; and C
- (iii) chances of absconson;

11. Mr. Ranjit Kumar submitted that as far as the first two instances are concerned, since charge-sheet has already been filed, the same do not survive. Furthermore, since the Appellant is a sitting MLA and a former Minister in the West Bengal Government, there was no chance of his absconson. D

12. Mr. Ranjit Kumar submitted that this is a fit case for grant of bail to the Appellant. E

13. Strongly opposing the Appellant's prayer for bail, Mr. Gopal Subramaniam, learned Senior Advocate, submitted that the offences alleged to have been committed by the accused, including the Appellant, were highly disturbing and had caused a serious law and order situation and had also spread panic amongst the people of the area. Mr. Subramaniam submitted that apart from being grievous, as well as heinous in nature, the crimes were committed pursuant to a well-conceived conspiracy which had been hatched under the leadership of the Appellant herein. Mr. Subramaniam submitted that although the name of the Appellant had not figured in the earlier FIRs, his complicity in the murder of the seven victims had been subsequently established by witnesses who had witnessed the incident and had maintained that the Appellant had been F
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A present throughout, until the dead bodies were buried, giving rise to an additional charge under Section 201 IPC.

B 14. Mr. Subramaniam submitted that having regard to the grievous and appalling nature of the crime, right from when the murders were committed, till the concealment of the bodies by burying them, the question of granting bail to the Appellant does not arise, especially when charge-sheet has been filed against him and the matter is ready for trial. Learned counsel submitted that the prayer made on behalf of the Appellant for grant of bail was liable to be rejected.

C 15. Having considered the submissions made on behalf of the respective parties, we are inclined to allow the Appellant's prayer for bail. Admittedly, two FIRs in respect of the same incident were lodged on the same day, while the third D FIR was lodged a few days later. The first FIR was lodged by one Nemai Ch. Sarkar, a local man. The second FIR was lodged by the S.H.O. of the Keshpur Police Station and the third FIR was lodged by the daughter of the deceased Ajoy Acharya.

E 16. There is no mention of the Appellant's name or alleged role in the incident. There was nothing to prevent at least Smt. Chandana Acharya, the daughter of the deceased, from naming him. Whether the investigating authorities took notice of the same is an entirely different matter. At this stage it will not be proper for us to dilate any further on the factual aspect F of the matter, but at least for the purpose of considering the Appellant's prayer for bail it does merit consideration that the Appellant has been arrested in connection with a FIR lodged 9 years after the incident. During all these years there is no allegation that the Appellant has interfered with the investigation. G Furthermore, in connection with this case he was also granted anticipatory bail. There is nothing to indicate that such privilege was either abused or misused by the Appellant.

H 17. As indicated hereinabove, the parameters laid down by this Court for considering grant of bail to an accused include

the likelihood of his absconsion and tampering with the evidence or the witnesses or even the investigation. Tampering with the evidence or the investigation is no longer relevant since charge-sheet has already been filed in the case. As far as absconsion is concerned, the Appellant being a sitting MLA, even such a possibility is remote. There is, of course, the possibility that the Appellant may tamper with the witnesses. However, considering the fact that the matter has been reopened as far as the Appellant is concerned, after an interval of about 10 years, even such a possibility appears to be remote. However, in order to prevent such an eventuality, the Appellant can be put on terms, as was done by the High Court while allowing his prayer for Anticipatory Bail.

18. We, therefore, allow the appeal and direct that the Appellant be released on bail to the satisfaction of the trial Court. The trial Court may impose such conditions as may be necessary to secure the Appellant's presence during the trial. In addition to the above, except for Garhbeta, which is his Assembly Constituency, the Appellant shall not enter other areas of Paschim Medinipur District, West Bengal, without the permission of the trial Court and shall report to the local police station where he will be residing, once on the last Sunday of each month, between 11.00 a.m. and 1.00 p.m. The Appellant shall make himself available before the trial Court at all stages of the trial, unless for any special reason he is exempted from doing so by the trial Court on any particular occasion.

19. The appeal is disposed of accordingly.

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Appeal disposed of.