State vs Omar Sharif @ Sueb on 14 February, 2020

Author: Arindam Lodh

Bench: Arindam Lodh

HIGH COURT OF TRIPURA
AGARTALA

(1) CRL. PETN. NO.56 OF 2019

The State of Tripura
..... State Petitioner(s)
Versus

Omar Sharif @ Sueb
S/O Anu Miah,
Resident of Masjid Patti Road,
Shantipara, P.S. East Agartala,
District-West Tripura.
..... Accused Respondent(s)

(2) CRL. PETN. NO.57 OF 2019

The State of Tripura
..... State Petitioner(s)
Versus

1. Sri Sumit Chowdhury @ Babai
S/o Sri Sishir Kanti Chowdhury,
R/O Ramthakur Road, near
Udiyaman Sangha,
P.S. East Agartala, District-West Tripura.

2. Sri Sumit Banik @ Bapi,
S/O Sri Naresh Ch. Banik,
R/O Ram Thakur Road,
College Tilla, Adarsha Palli,
P.S. East Agartala, District-West Tripura.

3. Sri Sukanta Biswas @ Bapi,
S/o Lt. Sitandra Ch. Biswas,
R/O A.K. Road, Border Golchakar,
P.S. West Agartala,
District-West Tripura-799 002.
..... Accused Respondent(s)

BEFORE

HON'BLE MR. JUSTICE ARINDAM LODH

For Petitioner(s) : Mr. Ratan Datta, P.P.

For Respondent(s) : Mr. P.K. Biswas, Sr. Advocate
Mr. B. Deb, Advocate
Mr. S. Rahaman, Advocate
Mr. D.C. Roy, Advocate
Mr. A.K. Pal, Advocate

Date of hearing : 14.02.2020

Date of delivery of Judgment & Order : 18.02.2020

Whether fit for reporting : YES

JUDGMENT AND ORDER

In both the aforesaid cases, the State of Tripura has filed two separate petitions under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 for cancellation of bail orders dated 03.12.2019 and 04.12.2019, passed by the learned Addl. Sessions Judge, Court No.2 in Sessions Trial case No.ST(T-1) 103 of 2019, in connection with West Agartala P.S. Case No.2019 WAG 172, registered under Sections 307/326/34 of IPC, and added Section 302 of the Code, granting bail of the accused persons.

2. The prosecution case, in brief, is that one Smt. Ranjana Das(mother of the deceased Budhisatta Das) had lodged a complaint to the Officer-in-Charge, West Agartala Police Station stating, inter alia, that her son, namely Budhisatta Das, who was a Branch Manager of UCO Bank, Dharmanagar Branch, came to Agartala on 02.08.2019, and on 03.08.2019, at night, at about 2400 hrs., when Budhisatta did not return back to home, she over telephone talked to

Budhisatta, who replied that he would return home very shortly, but, as he did not return home, she further tried to talk with him over phone, and on the phone she only heard "G.B. G.B.", and thereafter, the complainant along with others had rushed to G.B. Hospital and found that her son was lying with multiple stab injuries, and on query, she learnt that on 03/04/08.2019, at about 0030 hrs., One Sumit, son of proprietor, Kalika Jewelers, Sueb Miah and others, attacked

upon her son by broken bottle with an intention to kill him, and as a result, Budhisatta had sustained multiple injuries upon his person and admitted to G.B. hospital at Agartala in an alarming condition.

3. On receipt of the said complaint, the West Agartala Police Station had registered an FIR, being case No.2019 WAG 172 under Sections 307/326/34 of IPC and later on, on the death of Budhisatta, Section 302 of the IPC was added.

4. After registration of the case, being endorsed, S.I., Suman Ulla Kazi took up investigation and arrested the accused persons, the respondents herein.

5. Ultimately, Budhisatta Das, the deceased was referred from G.B.P. Hospital, Agartala on 07.08.2019 to Medica Super Specialty Hospital, Kolkata and on 16.08.2019 at 9.40 am, he succumbed to his injuries.

6. A number of bail applications were submitted by the accused-respondents and on 19.10.2019, the learned Chief Judicial Magistrate, West Tripura, Agartala had rejected the bail application submitted by the accused persons.

7. On 01.11.2019, the investigating officer submitted charge-sheet being No.73/2019 under Section 302/34 of IPC along with the prayer for custody trial of the above named accused persons, and thereafter the instant case was committed to the learned Court of Sessions Judge, West Tripura, Agartala, but, the learned Sessions Judge transferred

the case before the learned Additional Sessions Judge, Court No.2, West Tripura, Agartala.

8. On 07.11.2019, the respondents No.1 to 4 preferred bail applications before the learned Additional Sessions Judge, Court No.2, West Tripura, Agartala and the learned Additional Sessions Judge, Court No.5, the In-charge of Additional Sessions Judge, Court No.2, after hearing both the sides, rejected the bail applications and fixed the date on 11.11.2019 for production of accused persons.

Again on 11.11.2019, the accused-respondents preferred bail applications before the learned Court and after hearing both the defence and the prosecution the learned Court had rejected the bail application and remanded all the

accused persons to jail custody till 18.12.2019 and also fixed next date on 18.12.2019 for hearing on charge.

9. Thereafter, on 03.12.2019, the investigating officer of the instant case bearing No.ST(T-1) 103 of 2019 submitted a report along with seizure list, MVI report, screen report of seized vehicle before the learned Addl. Sessions Judge, Court No.2, West Tripura, Agartala with a prayer for tagging with the judicial docket as per O/S dated 30.11.2019.

It is pertinent to mention that as per prayer of one Sishir Kanti Chowdhury, owner of vehicle, bearing No.TR01-AJ-0222 detained in connection with case No.ST(T-1) 103 of 2019, the case record was put up and the learned Judge by order dated 30.11.2019 directed the investigating officer to

submit a report regarding seizure of documents of the vehicle in connection with the above mentioned P.S. case within three days and accordingly the I.O. on 03.12.2019 by an application dated 03.12.2019 submitted the same before the learned Court.

10. The other accused persons arrested in connection with ST(T-1) 103 of 2019 had moved a bail application before the learned Court below contending that since a seizure list had been submitted, the final report so submitted earlier was not complete and therefore the accused persons were entitled

to go on bail and the learned Court allowed the three accused persons, namely Sumit Chowdhury @ Babai, Sumit Banik @ Bapi and Sukanta Biswas to go on bail by order dated 03.12.2019 and on the same ground Sueb Ali, one of the accused persons was released on bail by an order dated 04.12.2019.

11. Challenge here is both the orders dated 03.12.2019 and 04.12.2019 passed by the Court below releasing the accused-persons on bail.

12. Learned P.P., Mr. Ratan Datta arguing strenuously before this Court submitted that the observation and the grounds that "It is also found that though IO has filed charge sheet but still he has kept the investigation open for further investigation. It is also found that this accused was arrested in this case on 05.08.2019. As other accused persons have already been granted on bail in this case, the bail application

of the accused is allowed. Hence, the accused person namely, Omar Sharif is allowed to go on bail on furnishing bail bond of Rs. 5,00,000/- with two sureties out of which one must be a Group-C Government servant serving under the Govt. of Tripura on condition that the accused persons shall attend the Court on each and every date fixed.", are wholly misconceived.

Later on, the learned P.P. added, in the said order dated 04.12.2019 that "Three separate bail bonds submitted

on behalf of the accused persons namely Sumit Banik @ Bapi, Sumit Choudhury @ Babai and Sukanta Biswas amounting Rs. 5,00,000/- (five lakh) each with two sureties of like amount in view of order dated 03.02.2019. which are checked, the same are found correct and accordingly accepted.", are also wholly misconceived.

13. Learned P.P. submitted that in the charge-sheet, there is no indication that further investigation is necessary, nor there was any reflection expressing any intention to file supplementary charge-sheet in future as the investigation has already been completed. Even, in the seizure report, dated 03.12.2019, submitted by the I.O. before the learned Addl. Sessions Judge, there was no clue that further investigation was necessary, but, the learned trial Court after hearing the parties concluded that the investigation was still in progress and allowed the respondents to go on bail by orders dated 03.12.2019 and 04.12.2019.

Continuing his submission, learned P.P. produced the entire case diary of the case before this Court and had drawn the attention of the Court about the materials surfaced by the investigating officer in course of his investigation. Learned P.P. submitted that there is sufficient direct evidence supported by two witnesses. There was dying declaration; the dying declaration was recorded by videographer, duly certified

under Section 65(b) of the Evidence Act. Accused Omar Sharif is a habitual professional killer, who was connected with various murder cases earlier. Accused Sumit Chowdhury is the son of one of the affluent jewelry house, and accused Sumit Banik also is a very rich and affluent person, closely connected with Sumit Chowdhury. Accused Sukanta Biswas is a Sub-Inspector of Police. All are very influential persons, and it will not be very difficult to win over the two eye-witnesses if they are released on bail. Lastly, learned P.P. strongly urged for setting aside the orders dated 03.12.2019 and 04.12.2019 granting bail to the accused persons.

14. On the other hand, defending the orders granting bail to the accused persons, Mr. P.K. Biswas, learned Sr. counsel, assisted by Mr. B. Deb appearing for the accused persons-respondents herein, submitted that from the nature of charge-sheet as submitted by the investigating officer, it is apparent that the investigation has not been completed. After filing of the final report, the investigating officer has submitted seizure list of the offending vehicle, which was sufficient to justify the observation and ground made by the

learned Court below that investigation has not been completed and it is still going on.

Mr. Biswas, learned Sr. counsel further submitted

that for the purpose of further investigation, a formal application has to be submitted by the investigating officer and only on being permitted by the Court, the I.O. can proceed with further investigation. According to Mr. Biswas, learned Sr. counsel, since the statutory period of 90(ninety) days was over and investigation still has been going on, the accused persons are entitled to have the advantage of default bail.

15. On the evidentiary value of the case, learned Sr. counsel has submitted that there are serious contradictions and the statements of the eye-witnesses are not credible and at best it could be a case of Section 304B of IPC. All the accused persons and the deceased were friends. There was sudden altercation and provocation, resulting into the death of the deceased.

In support of his submission, learned Sr. counsel, Mr. Biswas has relied upon the decisions of the Apex Court in Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors., reported in (2004) 5 SCC 347(para 13), Vinay Tyagi vs. Irshad Ali alias Deepak & Ors., reported in (2013) 5 SCC 762(para 22) and State(Delhi Administration) vs. Sanjay Gandhi, reported in 1978 SCC(Cri) 223(p.230, para 13, 14 and 15) and the case of Union of India vs. Indrajit Deb,

the order being passed on 13.07.2019 in Criminal Petition

No.14 of 2018(para 8), decided by this Court.

16. Mr. Biswas, learned Sr. counsel has tried to persuade this Court the nature of the statements made by the eye-witnesses under Section 164(5) of CrPC that Sri Basu Kar, one of the eye-witnesses is not the eye-witness at all and he is a hearsay witness. The said eye-witness had heard the incident from one Kishore Pal, another eye-witness to the incident, whose statements were also recorded under Section 164(5) of CrPC in course of investigation.

17. Before I delve into the merits of the instant two petitions for cancellation of bail, I like to travel through some of the authorities where the law relating to various situations for cancelling the bail granted to an accused has been discussed and settled.

18. In Manjit Prakash & Ors. vs. Shobha Devi & Anr. reported in (2009) 13 SCC 785, it was observed that:

> 6. "7. It is trite law that the considerations for grant of bail and cancellation of bail stand on different footings. By a majority judgment in Aslam Babalal Desai v. State of Maharashtra [(1992) 4 SCC 272 : 1992 SCC (Cri) 870] the circumstances when bail granted can be cancelled were highlighted in the following words: (SCC pp. 289-90, para 11)
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> „11. On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the

investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to

prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under sub-section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex cases and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under proviso (a) to that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2) of Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instil a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory time-frame. The deeming fiction of correlating the release on bail under sub-section (2) of Section 167 with Chapter XXXIII i.e. Sections 437 and 439 of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under Section 437(1) or (2) or Section 439(1) it follows as a natural consequence that the said order can be cancelled under sub-section (5) of Section 437 or sub-section (2) of Section 439 on considerations relevant for cancellation of an order thereunder. As stated in Raghubir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or

> indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

8. It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or

attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

7. In Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] it was noted as follows: (SCC pp. 535-36, para 11)

> "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
>
> (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

> (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
>
> (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)

8. It was also noted in the said case that the conditions laid down under Section 437(1)(i) are sine qua non for granting bail even under Section 439 of the Code.

9. In para 14 it was noted as follows:

> "14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Union of India v. Rajesh Ranjan [(2004) 7 SCC 539 : 2004 SCC (Cri) 1987] . While cancelling the said

bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In

such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

10. Even though the re-appreciation of the evidence as done by the court granting bail is to be avoided, the court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail.

11. In Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] it was noted as follows: (SCC p. 345, para 11)

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] . In that case the Court observed as under: (SCC p. 124, para 16)

„16. ... If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When,

however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for

the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court. "

12. The perversity as highlighted in Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] can also flow from the fact that as noted above, irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. The irrelevant materials should be of a substantial nature and not of a trivial nature.

13. Since the High Court has not indicated any reasons for directing cancellation of bail, the impugned order cannot be maintained and is set aside. The matter is remitted to the High Court to decide the matter afresh and dispose of the application filed. We make it clear that we have not expressed any opinion on the merits of the case."

19. I may profitably refer the case of Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. reported in (2004) 7 SCC 528 where the Apex Court had held that:

" The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances.....
....

20. While deciding the case[Kalyan Chandra Sarkar(supra)], the Apex Court further noticed that the High Court has given the period of incarceration already undergone

by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration(three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

21. It was further observed in the case of Kalyan Chandra Sarkar(supra) that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court

and subsequently when the High Court did grant bail, the Apex Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, the Apex Court, did not notice any indication of the fact that the High Court took note of the grounds which persuaded the Apex Court to cancel the bail. The Apex Court thus observed that such approach of the High Court is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

22. From the above authorities, in my opinion, the following factors are to be borne in mind while granting or rejecting of bail:

(i) Detailed examination of the evidence and elaborate documentation of the merit of the case need not be discussed or looked into;

(ii) Prima facie materials on record are to be considered;

(iii) The nature of accusation and the severity of punishment in case of conviction and the nature of support evidence;

(iv) Whether there is reasonable apprehension to win over the witnesses or to tamper the evidence;

(v) Prima facie satisfaction of the Court in support of

the charge;

(vi) Danger of the accused absconding or fleeing;

(vii) The position and standard of the accused;

(viii) The court has to notice the grounds on which earlier bail applications were rejected and the Court will have to give specific reasons why in support of such earlier rejection the subsequent application for bail should be granted.

23. Bearing in mind the aforesaid principles, which, on facts are relevant also to decide the present petitions, I will now proceed to consider the merits of the present petitions, preferred by the State of Tripura asking the Court to set aside the orders dated 03.12.2019 and 04.12.2019 by way of cancellation of bail granted to the accused persons by the Ld. Addl. Sessions Judge.

24. From the arguments as canvassed by the learned counsels, I have noticed that the reasons assigned by the learned Sessions Judge that with the submission of the seizure list after filing of charge-sheet amounts to continuation or non-completion of the process of investigation carried on by the investigating officer. Eventually, it has to be tested whether such act of the investigating officer amounts to "further investigation" or "fresh investigation".

25. Learned Sr. counsel, Mr. P.K. Biswas, in course of

his submission read over the relevant portion where the investigating officer while submitting the charge-sheet had made an observation. The said relevant proportion is necessary to be reproduced which is as under:-

"Under the above facts and circumstances I, do here by submit charge sheet vide west Agartala

PS Charge Sheet no-73/19, Dated-01/11/19, U/S-302/34 IPC against 1) Sumit Chowdhury(31) @ Babai S/O Sri Sishir Kanti Chowdhury of Ramthakur Road, near Udiyaman Sangha PS East Agartala 2) Omar Sharif @ Sueb(35) S/O Anu Miah of Masjid patty road Shantipara PS East Agartala, 3) Sumit Banik @ Bapi(35) S/O Sri Naresh Ch. Banik of Ramthakur road Collegetilla, Adarshapally, PS-East Agartala and 4) Sukanta Biswas(44) S/O Lt. Sitendra Ch. Biswas of A.K. Road Boarder Golchakar PS-West Agartala in c/w the instant case keeping open further investigation of the case as per provision u/s-167(8) CrPC to face trial in the open Court of Law for its fair ends of Justice. Witnesses may kindly be summoned to prove the case."

Mr. P.K. Biswas had laid much emphasis on the language, ".....the instant case keeping open further investigation of the case as per provision u/s-167(8) CrPC to face trial ....." and submitted that the said observation of the I.O. is quite indicative of the fact that investigation has not been completed and it is still going on and further, when the said further investigation would be completed that could not be forcing. On the basis of that submission, the learned Sessions Court in his order dated 03.12.2019 in connection with ST(T-1) 103 of 2019 had granted bail to the accused persons observing that:-

> "Further investigation followed by further report in final form may take either a longer time or a short time and in such a situation trial of the case cannot be commenced till before submission of further report in final form after completion of further investigation,
>
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>
> but for that reason the accused persons cannot be detained in custody for a(sic) uncertain period".

Accordingly, the accused persons namely, Sumit Chowdhury @ Babai, Sumit Banik @ Bapi and Sukanta Biswas were released on bail. On the next date, i.e. on 04.12.2019 while entertaining a bail application being put up, the learned Sessions Judge had released Omar Sharif @ Sueb, another accused-respondent herein by making the following observations:

> "I perused the record and it is found that vide order dated 03.12.2019 other three accused persons have already been granted bail. It is also found that though IO has filed charge sheet but still he has kept the investigation open for further investigation. It is also found that this accused was arrested in this case on 05.08.2019. As other accused persons have already been granted on bail in this case, the bail application of the accused is allowed. Hence, the accused person namely, Omar Sharif is allowed to go on bail on furnishing bail bond of Rs. 5,00,000/- with two sureties out of which one must be a Group-C Government servant serving under the Govt. of Tripura on condition that the accused persons shall attend the Court on each and every date fixed."

26. I have given my thoughtful consideration to the submission of learned P.P. that the investigation was wholly completed and after completion of investigation charge-sheet was submitted on 01.11.2019 and the observation that the said charge-sheet has been filed keeping open further

investigation of the case as per provision under Section

167(8) of CrPC has wrongly been quoted by the I.O. out of his ignorance of law or by typographical error. It would be Section 173(8) CrPC instead of Section 167(8) CrPC.

27. At the time of consideration of the merits of the rival submissions, I have perused the order dated 11.11.2019 passed by the learned Sessions Court wherein the learned Court below while hearing two separate bail applications filed by the accused persons rejected the prayer for granting bail by way of making following observations:-

> "Learned P.P., however, defended the prayer for custody trial of the accused persons and stated that since the charge sheet in the case has been filed within the statutory period and as such right to be released on bail has been extinguished. In support of his contention learned P.P. has relied on a judgment of Calcutta High Court reported in 2009 (4) CalL T 597:2009 Legal Eagle 533 (Chandu Mondal VS State of West Bengal).
>
> The prima facie material so far available in the final report (charge sheet) submitted by IO it appears that all the accused persons are involved in committing murder of a Bank Manager in the heart of the City of Agartala. Therefore, the alleged offence can be said to be serious in nature. So considering nature of the offence I find it inappropriate to grant bail to the accused persons. Hence, both the bail applications stands rejected at this stage.
>
> All the accused persons are remanded to JC till 18.12.2019."

28. Charge-sheet was filed on 01.11.2019. However, on 02.12.2019, the investigating officer forwarded a seizure

list and MVI report with a prayer for tagging the same with the Judicial Docket. In his forwarding report, the I.O. has stated inter alia that:-

> "On secret input regarding use of one vehicle before and after commission of crime on 18/11/2019 one vehicle bearing registration no.TR01 AJ 0222 Vento Highline, Vide Chasis No.WVWH12602DT011296, Engine No.CLS089686 and its registration certificate which is owned by Sri Shishir Kanti Chowdhury, S/O- Lt. Manmohan Chowdhury, of Ramthakur Road, Agartala, PS-East Agartala, were seized in c/w the case. During investigation I have also arranged mechanical examination of the above noted seized vehicle and collected the MVI report and its screen report. The original seizure list, MVI report and screen report of the above noted seized vehicle are enclosed herewith with a prayer for tagging with the judicial docket."

29. On 30.11.2019, an application was filed by Sri Shishir Kanti Chowdhury, the owner of the vehicle for releasing the said vehicle on bail. Now, whether filing of the seizure list in the trial Court with a prayer to tag it with case record tantamounts to undertaking of further investigation, and if so, whether it has the authority of law.

30. In this regard, I may profitably rely upon the 41 st report of the Law Commission as referred to by the Apex Court in Ram Lal Narang vs. State(Delhi Administration) reported in (1979) 2 SCC 322, where the object of incorporation of Sub-Section(8) of Section 173 of CrPC was considered as under (SCC pp.333, 334, para 15):-

"15.....
.....

The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

> "14.23. A report under Section 173 is normally the end of the investigation.
>
> Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."
>
> Accordingly, in the CrPC, 1973, a new provision, Section 173(8), was introduced and it says:
>
> "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

31. In the case of Vinay Tyagi(supra), the Apex Court had an occasion to discuss the meaning "Further Investigation". In para 22 it was held:

> "22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report"

would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or

impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation."

32. At para 23 of the case of Vinay Tyagi(supra), the Apex Court had expressed that:

> "23. However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. ....".

33. From the above interpretative analysis, it is understood that "further investigation" is limited to the discovery of new oral or documentary evidence and the investigating agency is always vested with the power to bring such newly discovered materials to the notice of the Court for ends of justice.

34. In the instant cases, there is no such prayer for "fresh investigation", "re-investigation" or "De novo investigation" for which the permission of the appropriate court is mandatory. Here, true it is, the I.O. has submitted final report(charge-sheet) on 01.11.2019 and subsequent thereto, on secret input, the vehicle used by the accused persons at the relevant point of time was seized on 18.11.2019 and after mechanical examination, the police had only made a prayer to the court to tag the reports with the judicial docket. The investigating officer has not prayed for "re-investigation" or "fresh investigation" or "de novo investigation" which may definitely cause the delay of completing trial. In my view, the learned P.P. has correctly said that out of ignorance of law, the investigating officer has quoted Section 167(8) of CrPC for further investigation.

35. Having regard to the aforesaid legal position, I find in the present case, the primary grounds for releasing the accused persons on bail as shown by the learned Sessions Judge that the filing of the seizure list relating to the vehicle connected with the commission of crime would any way cause delay of the process of trial regardless of the fact that there is no prayer for "fresh investigation", "reinvestigation" or "de novo investigation". As such, I am unable to agree with the reasoning of the learned Addl. Sessions Judge to release the accused persons on bail. In my opinion, the Addl. Sessions Judge was unnecessarily swayed with such type of hyper- technical issues in granting bail to the accused persons without considering the adequacy and veracity of the evidence and other related issues as emanated in the case. Accordingly, I am unable to accept the submission of learned Sr. counsel, Mr. P.K. Biswas who has defended the reasoning as assigned by the learned Addl. Sessions Judge to release the accused-respondents on bail on the pretext that investigation was still going on and it would cause delay of the completion of the process of trial. Contrary thereto, next date has already been fixed by the learned Sessions Judge to frame charge.

36. In the instant case, after the vehicle connected with the offence being seized on secret information, the investigating officer has submitted a seizure list along with mechanical report of the vehicle for tagging the same with case docket. A plain reading of the provisions of Section 173(8) of CrPC clearly demonstrates that the investigating officer after filing of charge-sheet cannot be said to have precluded from furnishing such newly discovered document with a prayer to tag the same with the case docket without affecting or frustrating the final report which he earlier submitted.

37. In the case of Hasanbhai Valibhai Qureshi(supra), the Apex Court referring to one of its earlier decision in Ram Lal Narang vs. State(Delhi Administration) reported in (1979) 2 SCC 322 had held as under in para 13:-

> "13. In Ram Lal Narang Vs. State(Delhi Admn.) it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case"

38. In the case in hand, after filing of charge-sheet, the investigating officer was able to seize the vehicle connected with the crime and it is desirable that the police would inform the same to the learned Court with the prayer to tag it with the case docket. For obvious reason, the said action of the investigating officer, thus, falls within the ambit of the provision of Section 173(8) of CrPC and it would be beyond any logic to hold that such action of police would cause delay for commencement of trial.

It is not the case of the accused-respondents herein that they are in any way prejudiced due to the filing of the seizure list before the Court. Of course, they are entitled to be supplied with the said copy of the seizure list, which the prosecution or the Court would definitely supply to the accused persons.

39. This Court will decide the merits of the petitions filed by the State praying for cancellation of bail. A Court may grant or reject bail application filed by an accused; but, once bail is granted, its cancellation for obvious reason stands on quite distinct and different footings. True it is, that it is the bounden duty of the courts to ensure free and fair trial to render real, substantial and effective justice which is an absurdity without the aid of the witnesses as well as participation of accused

connected with the case. Sitting in this complex situation, I have taken due consideration to the decision of the Apex Court in State (Delhi Administration) vs. Sanjay Gandhi reported in 1978 SCC(Cri) 223 wherein a three-judge bench has observed thus:-

> "13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.
>
> .... In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent.
>
> 14. Before we go to the facts of the case, it is necessary to consider what precisely is the nature of the burden which rests on the prosecution in an application for cancellation of bail. Is it necessary for the prosecution to prove by a mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they are won over by the accused? We think not. The issue of cancellation of bail can only arise in criminal cases, but that does not mean that every incidental matter in a criminal case must be proved beyond a reasonable doubt like the guilt of the accused. Whether an accused is absconding and therefore his property can be attached under Section 83 of the Criminal Procedure Code, whether a search of person or premises was taken as required by the provisions of Section 100 of the Code, whether a confession is recorded in strict accordance with the requirements of Section 164 of the Code and whether a fact was discovered in consequence of information received from an accused as required by Section 27 of the Evidence Act are all matters which fall peculiarly within the ordinary sweep of criminal trials. But though the guilt of the accused in cases which involve the assessment of these facts has to be established beyond a reasonable doubt, these various facts are not required

> to be proved by the same rigorous standard. Indeed, proof of facts by preponderance of probabilities as in a civil case is not foreign to criminal jurisprudence because, in cases where the statute raises a presumption of guilt as, for example, the Prevention of Corruption Act, the accused is entitled to rebut that presumption by proving his defence by a balance of probabilities. He does not have to establish his case beyond a reasonable doubt. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused. The prosecution, therefore, can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail."

40. In the case of Sanjay Gandhi (Supra) the Apex Court at para 25 has observed that:-

> "25. The power to cancel bail was exercised by the Bombay High Court in Madhukar Purshottam Mondkar v. Talab Haji Hussain [AIR 1958 Bom 406 : 60 Bom LR 465] where the accused was charged with a bailable offence. The test adopted by that court was whether the material placed before the court was "such as to lead to the conclusion that there is a strong prima facie case that if the accused were to be allowed to be at large he would tamper with the prosecution witnesses and impede the course of justice". An appeal preferred by the accused against the judgment of the Bombay High Court was dismissed by this Court. In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118, 128-29 (Para 28) : 1978 SCC (Cri) 41, 52 (Para 28) : 1978 Cri LJ 129, 137] while confirming the order of the High Court cancelling the bail of the accused, this Court observed that the only question which the court had to consider at that stage was whether "there was prima facie case made out, as alleged, on the statements of the witnesses and on other materials", that "there was a likelihood of the appellants tampering with the prosecution witnesses". It is by the application of this test that we have come to the conclusion that the respondent's bail ought to be cancelled."

41. Now coming to the question of determining the sufficiency and insufficiency of evidence or materials, let me have a short survey of the evidence and materials surfaced in course of investigation to determine whether a strong prima facie case has been made out against the accused-persons or not.

42. I have perused the statement of Kishore Kumar Pal and Basu Kar recorded under Section 161 and 164(5) of CrPC. Both of them gave vivid description how the murder of Budhisatta Das, the deceased herein was caused.

43. Kishore Kumar Pal has stated that Budhisatta and one of his friends were taking beer. At about 1200 hrs., they were in front of Sharada Medical Agency. After 5/6 minutes, one of the accused-person, namely, Sukanta Biswas had arrived there with a white colour Maruti vehicle. The said Sukanta Biswas got down from the vehicle and started to urinate in front of a shop on the main road. The said Kishore Kumar Pal requested Sukanta Biswas, one of the accused- person not to urinate in front of the shop but to urinate nearby a drain. Being annoyed, the said Sukanta Biswas had scolded the witness Kishore Kumar Pal. In the meanwhile, two accused-persons came with a vehicle. He has been able to identify two persons, who are Sumit Chowdhury, S/o Sri Sishir Kanti Chowdhury, proprietor of Kalika Jewellers and another Sumit Banik. At that time, Budhisatta Das had gone forward and talked with Sukanta Biswas, Sumit Chowdhury and Sumit Banik. When there was altercation between them, at that time, the said witness tried to persuade Budhisatta, but nobody was in a mood to hear him. First, there was scuffling between Budhisatta and Sukanta Biswas when Sumit Chowdhury and Sumit Banik also came and participated in the said scuffling. Ultimately, the said three persons have assaulted Budhisatta. The said witness had tried to stop such untoward incident but within a short while Omar Sharif @ Sueb had arrived at the place with a Scooty. One of the accused-person had informed Sueb that Budhisatta had assaulted „Sir Sukanta Biswas. Thereafter all the accused- persons mercilessly had assaulted „Budhisatta with sharp weapon injuring him at various vital parts of his person. At that time, Sueb also tried to assault, the said eye witness. However, Basu Kar had asked Sueb not to do that. Sueb had threatened them to leave the place. All the persons have left the place keeping Budhisatta on the road. The said witness Basu Kar also has left the place. Thereafter, being anxious about the condition of Budhisatta, they again returned back to the place at 0120 hrs. But out of fear, they are not in a position to do anything and had returned to their house. After returning back to home, the said witness informed the matter to the mother and after a short while, he again came to the place but Budhisatta was not found there and he came to understand that someone had taken Budhisatta to Hospital. The said witness has stated that he could recognise all the four persons and in future also he would recognise them.

Another eye witness, Basu Kar has stated in his statement recorded under Section 161 and 164(5) of CrPC that at 1200 hrs. He was closing his pan shop. He also had again vividly described of the incident as described by Kishore Pal.

44. Thereafter, FIR was lodged by mother of the Budhisatta. In course of investigation, the investigating officer arrested Sumit Chowdhury, who disclosed the names of other two members but not the name of Omar Sharif @ Sueb. The two accused-persons, namely, Sumit Banik and Sukanta Biswas had surrendered before the police station. On interrogation, none of the accused-persons has disclosed anything regarding stabbing. They were arrested. Later on Omar Sharif, the accused-person was also arrested by police. During the interrogation, Omar Sharif had made disclosure statement which was recorded in presence of one Magistrate, namely, Rinku Reang, DCM, Sadar. The wearing apparels of Omar Sharif were recovered from the house of examined witness Uma Saha. Uma Saha had given a statement in that regard. On the basis of disclosure statement weapon used in the offence was seized. After preparing proper seizure list, the wearing apparels were sent to forensic laboratory for examination. At the time of recovery of weapon of offence as per the disclosure statement of the Omar Sharif, the Executive Magistrate and other

independent witnesses were also present. The investigating officer also had recorded the statement of Executive Magistrate.

45. In the hospital, Budhisatta, the deceased was able to disclose the names of the persons who assaulted and caused injuries to his person. On query made by police official, the Doctor opined as follows:-

> "As per order on the Medical Superintendent of AGMC and GBP hospital and requisition of S.I of police, West Agartala, P.S., I hereby stated that the injuries found over the Body of Budhisatta, thus, who was admitted of Trauma Care Centre on 04.08.2019 at 1.43 A.M. (Adm, Reg, No.1528) was deep cut injuries. This type of injuries can be caused by sharp weapons. The weapon which you send via the police person is a sharp weapon. So, the injuries of Budhisatta thus may be caused by this type of sharp weapon."

46. A prayer was made to record the dying declaration of Budhisatta. Rakesh Das, one constable in his statement made under Section 161 of CrPC stated that when Budhisatta was taken to Hospital, one Assistant Sub-Inspector, West Agartala Police Station, Bipul Debnath was talking to Budhisatta and entire conversation was recorded by him. The deceased informed that he was assaulted by four persons. The said conversation was also video-graphed which was taken into evidence, being duly certified under Section 65(b) of the Indian Evidence Act, 1872. Samir Barman, one constable who was posted as DAR(District Armed Reserved) A.D. Nagar has stated in regard to certification of the recording. It is further pertinent here that the deceased has given dying declaration as per requisition made by the investigating officer disclosing the names of the accused- persons who caused injuries to his persons. In his dying declaration, Budhisatta has specifically stated that four persons have assaulted him by sharp cutting weapons.

47. As per the SFSL report, it is transpired that the weapon of offence recovered as per the disclosure statement of arrested accused-person, Omar Sharif @ Sueb was used for stabbing the victim Budhisatta Das. The SFSL report clearly corroborated the same.

48. In this backdrop, in my considered view, there are sufficient prima facie evidence against the complicity of the accused-persons behind the murder of deceased-Budhisatta. Now, I have given my thoughtful consideration to the submission of the learned Sr. Counsel for the accused-persons that there is no chance of absconsion or to threaten or to win over the witness and there is no chance of tampering the evidences, vis-à-vis, the submission of learned P.P., strenuously arguing in favour of strong probability of fleeing away or tampering the witnesses and evidence on record if they are released on bail.

49. The learned Sr. Counsel for the accused-persons has relied upon the decision of this Court in case of Union of India vs. Indrajit Das(supra), where this Court relying upon the case of Manjit Prakash(supra) finally arrived at a finding that following eventualities are to be kept in mind while considering the application for cancellation of bail.

This Court at para-8 of the case of Indrajit(Supra) has observed that:-

> "8. According to me, after perusal of the observations made above and the principles laid down by the Apex Court, the same principles can be applied in this case also. In the instant case, the petitioner could not show that the accused-respondent after being enlarged on bail -
>
> i. Has misused his liberty by indulging in similar criminal activity;
>
> ii. Interfered with the course of investigation; iii. Attempted to tamper with the evidence or witnesses;
>
> iv. Threatened the witnesses or indulged in similar activities which would hamper smooth investigation;
>
> v. There is likelihood of his fleeing to another country;
>
> vi. Attempted to make himself scarce by going underground or becoming unavailable to the investigating agency;
>
> vii. Attempted to place himself beyond the reach of his surety, etc."

50. Bearing in mind the ratio as propounded by the present case is necessary to be examined. In the instant case, from the case dairy it is revealed that the witnesses are under serious threat. In one note of the case dairy dated 27.08.2019, it is revealed that "Myself received secret source information that some persons are trying to influence the eye witnesses in c/w the case and due to this they are very much tense. For which they do not even approach to the police. It is noted here that the arrested A/Ps are very much influential persons and the arrested A/P Omar Sharif @ Sueb is a habitual criminal. It is mentioned here that after death of the victim in c/w the instant case eye witnesses are feeling very much tense but due to fear they cannot express their views. From the secret source it is learnt that the witnesses fears(sic) if the a/ps gets bail they will not spare them".

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 faming 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, untramelled 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.

58. In view of above order passed by this Court, the accused-persons are committed to custody.

59. With the above observation and direction, the instant criminal petitions stand disposed.

JUDGE