

19.09.2020
Ct. No. 3
Sl.No. 1
S. Banerjee

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

(Via Video Conference)

CRM No. 7065 of 2020

In re : **Aloke Mukherjee @ Alok Nath Mukherjee**
..... Petitioner

Re : An application under Section 439 of the Code of Criminal Procedure in connection with Sankrail Police Station case no. 836 of 2020, dated 17.09.2020 under Sections 341/295A/505(1)(c)/325/504//34 of the Indian Penal Code.

Mr. Sourav Chatterjee
Mr. Soumya Nag

..... For the petitioner

Mr. Rana Mukherjee, APP
Mr. Santanu Chatterjee

..... For the State.

The petitioner undertakes to affirm and properly stamp the application within 48 hours of resumption of normal functioning of the court. This bail application is taken up through video conference on the basis of such undertaking.

The hearing of the instant bail application is taken up by this bench constituted specially by the Hon'ble Chief Justice this date at 11 a.m.

Bail is prayed on behalf of the petitioner on three-fold grounds, viz., i) the Investigating Officer failed to follow the principles laid down in the decision of Arnesh Kumar –Vs.

State of Bihar, reported in (2014)8 SCC 273, ii) the allegation made in the FIR by the defacto complainant does not contain any ingredient of offence under Section 295A IPC and other offences as alleged; iii) the defacto complainant filed an affidavit on 18th September, 2020 before the learned Chief Judicial Magistrate, Howrah stating inter alia that the petitioner has been wrongly implicated in the FIR and he is in no way connected with the offence.

At this stage it is necessary to state in a nut-shell the content of the FIR filed before the Officer-in-Charge, Sankrail Police Station by one Biswajit Choudhury. According to the defacto complainant on 17th September, 2020 at about 10:30 am, when he was going to the house of his friend Sajjad, he found a procession of a particular political party. Near Goaberia Mosque they were shouting slogans “Jai Shree Ram” and also uttered abusive language towards Mohammedan community. When the defacto complainant protested, some persons from the said procession assaulted him physically. Amongst them, the petitioner was a party to such offence.

After receiving such complaint, police started Sankrail Police Station case No. 836 of 2020 on 17th September, 2020 and arrested the petitioner. On the next date he was produced before the learned Chief Judicial Magistrate, Howrah and on the prayer of the investigating officer, his

prayer for bail was rejected and he was remanded to police custody for two days.

I have already recorded the grounds made by the petitioner in support of his prayer for bail hereinabove.

The learned Public Prosecutor-in-Charge on the other hand draws my attention to the forwarding report submitted by the Investigating Officer before the learned Chief Judicial Magistrate praying for police custody of the petitioner. It is stated by the Investigating Officer that for the purpose of investigation he wants to reconstruct the incident with the aid of the arrested persons and considering such reason the learned Chief Judicial Magistrate refused the prayer for bail.

Section 41(i)(b)(ii) states that if a person commits a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, the police officer may arrest such person without an order from a magistrate or without warrant if the following conditions are satisfied – the police officer is satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court

or to the police officer; or unless such person is arrested, his presence in the court whenever required cannot be ensured.

The grounds mentioned in Section 41(1)(b)(ii)(a) to (e) does not include a ground that a person against whom a reasonable belief or credible suspicion exists for committing offence punishable with imprisonment for a term less than seven years may be arrested by the police officer for reconstruction of the incident. Such reconstruction may be made under a prayer before the learned jurisdictional magistrate to direct the petitioner to appear before the Investigating Officer in order to help him to reconstruct such incident.

The learned jurisdictional magistrate absolutely failed to consider the provisions of law as well as the principles laid down in the case of Arnesh Kumar. It is important also to note here that the defacto complainant subsequently filed an affidavit clearly stating that the petitioner is not involved in the offence and he was wrongly implicated in Sankrail Police Station Case No. 836 of 2020.

For the reasons stated above, prayer for bail of the petitioner is allowed.

The petitioner may find bail of Rs. 5,000/- (Rupees five thousand only) with two sureties of like amount to the satisfaction of the learned jurisdictional magistrate with further condition that he must meet the Investigating Officer for the purpose of reconstruction of the incident if the

Investigating Officer thinks so even after filing of affidavit by the defacto complainant on the date and time as fixed by the Investigating Officer.

Accordingly, CRM 7065 of 2020 is disposed of.

(Bibek Chaudhuri, J.)