

09.10.2020
Item no. 32
Ct. No.5
CHC

C.R.R. No.1383 of 2020
C.R.A.N. 1 of 2020

In Re:- An application under Sections 397/401 read with 482 of the Code of Criminal Procedure.

And

In the matter of:-

Md. Danish & anr.

... Petitioners

Mr. Angshuman Chakraborty

... for the petitioners

Mr. Ranabir Roy Chowdhury,

Mr. Mainak Gupta

...for the State

Mr. Manas Kumar Barman,

Mr. Arun Kumar Das

...for the opposite party no.2

The revisional application under Sections 397/401 read with Section 482 of the Cr.P.C. is against the judgement and order dated 04.09.2020 passed by the Learned Additional Sessions Judge, First Court, Sealdah, South 24 Parganas, in Criminal Revision No.16 of 2020 reversing the order dated 25.08.2020 passed by the Learned Judicial Magistrate, 5th Court in Charge of Learned ACJM Sealdah granting bail to petitioners.

Learned advocate, Mr. Chakraborty for the petitioners submits that the impugned order is highly illegal, because in exercise of revisional authority under Sections 397/399 of Cr.P.C. there

cannot be any cancellation of bail order, already granted in favour of the petitioners.

It is further submitted that in the absence of any prayer for cancellation of bail, the revisional Court has improperly exercised its authority, while affecting the liberty of the petitioners by way of making cancellation of bail order with a direction to hold an inquiry under Section 340 Cr.P.C. for launching prosecution under Sections 193/196/199 I.P.C.

Mr. Ranabir Roy Chowdhury, learned advocate representing the State/opposite party no.1 submits that there is a fraud committed upon the Court while obtaining bail taking ground of mutual settlement, which actually was not held between the parties.

Mr. Roy Chowdhury, learned advocate supporting the order of the revisional Court submits that there is no illegality committed in the order impugned.

Mr. Manas Kumar Barman, learned advocate representing the opposite party no.2 submits that even one day after rejection of the prayer for bail by the learned regular Court below concerned with due consultation of the C.D., the grant of bail on the strength of a put up petition supported by fresh power with a story of mutual settlement smocks suspicion and in order to unearth the truth, an enquiry, as contemplated in the order impugned should be conducted.

It is further submitted by learned advocate for the opposite party no.2 that in the interest of obtaining bail, a fraud has been

committed taking a plea of mutual settlement, which is highly illegal, as no settlement has yet been effected. Attention of the Court is drawn to the several injuries sustained by the injured together with the defacto complainant.

Upon perusal of the impugned order, it appears that the Learned Magistrate granted bail taking a note of mutual settlement effected between the parties even one day after rejection of the prayer for bail by the learned regular Court below.

By the impugned order, the learned revisional Court directed learned A.C.J.M., Sealdah to issue warrant of arrest against the accused persons.

Surprisingly when the prayer for bail was cancelled, petitioners were not given opportunity of hearing. Since an enquiry has been directed to be conducted in terms of the order passed in Criminal Revisional Application No.16 of 2020 under Section 340 Cr.P.C, upon hearing rival submissions of the parties, the Court is of the view that the enquiry, as contemplated by the revisional Court, is extremely supportive of a situation raising alleged perpetration of fraud committed upon the Court, while obtaining bail even one day after rejection of the prayer for bail by the learned regular Court below.

When there has been an order passed by the revisional Court directing issuance of warrant of arrest against the accused persons, the same should be stayed for a limited period of time with direction to surrender before the learned court below within such limited period of time and with a further direction to

cooperate with enquiry as contemplated in the order of revisional Court.

The instant revisional application is thus disposed of directing the petitioners to surrender within a period of fortnight before the Learned A.C.J.M., Sealdah and upon surrendering before the learned court below within the stipulated period of time, if there be any bail petition filed at the instance of the petitioners, the same will be decided in accordance with law providing sufficient opportunity of hearing to both the parties. Petitioners are further directed to cooperate with the enquiry, as contemplated in the order of revisional court at 04.09.2020.

With this direction/observation, the revisional application along with connected application stands disposed of.

(Subhasis Dasgupta, J.)

