

**C.R.M. 7350 of 2020
With
CRAN 1 of 2020
With
CRAN 2 of 2020**

(Via Video Conference)

In Re: An application for bail under Section 438 of the Code of Criminal Procedure.

Kaushik Dutta @ Koushik Dutta & Ors.
Versus
State of West Bengal

Mr. Sourav Chatterjee, Adv.
Mr. Koustav Bagchi, Adv.

...for the petitioners.

Mr. Sabyasachi Chatterjee, Adv.
Mr. Akashdeep Mukherjee, Adv.

...for the de-facto complainant.

Mr. Saswata Gopal Mukherjee, Ld. GP.
Ms. Rafia Hossain, Adv.

...for the State

This is an application for clarification of our order dated 9th October, 2020. Inadvertently in the second paragraph of the order, we have used the words “trial Court” instead of “learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas”. This needs to be corrected and now the order is required to be corrected. However, the problem arises in using the words “trial Court” in the said order where we have set out certain conditions that the applicants shall enjoy till they surrender before the appropriate court.

Mr. Sourav Chatterjee, learned Counsel appearing on behalf of the petitioners has submitted that, as committal has not been done as yet, the order may be modified by deleting the words ‘trial Court’ and substituting it either by the learned Additional Chief Judicial Magistrate, Barrackpore or by the Sessions Judge as the Sessions Court would have also the jurisdiction to entertain the bail after surrender on the strength of the judgment of the Hon’ble Supreme Court in *Sundeep Kumar Bafna – vs. State of Maharashtra & Anr.* reported in 2014

(16) SCC 623.

On 9th October, 2020, we have merely extended the time to enable the petitioners to surrender before the appropriate Court and that what was intended by us when we passed the order. Our intention was never to fetter the right of the appropriate court to consider the application for bail independently and to impose such condition/conditions as may be appropriate. \

We have also recorded in the earlier order that the learned Public Prosecutor has referred to an order passed by the co-ordinate Bench on 18th September, 2020 to demonstrate the persons similarly placed with the present petitioners are denied bail by a co-ordinate Bench. However, we have also taken note of the fact that Rupali Sarkar was granted bail by the learned Magistrate. Such exercise of power was within the forecorner of Section 437 of the Code of Criminal Procedure.

In view thereof, we modify our earlier order dated 9th October, 2020 to the extent that the applicant should surrender before the appropriate Sessions Court on or before 23rd December, 2020 and the Sessions Court shall decide the application for bail, if filed, in accordance with law. The conditions imposed in the original order also stand recalled.

CAN 2 of 2020 is, thus, disposed of.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)