

18.12.2020

Item No.1
Ct.No.42
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1781 of 2020

**Sri Suraj Barma
versus
Sri Ajoy Thakur & Anr.**

Ms. Mousumi Bhowal ... For the Petitioner.

Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly ... For the State.

Learned advocate for the petitioner is present in Court.

The present revisional application has been preferred against the judgement and order dated 20.10.2020 passed by the learned Additional District and Sessions Judge, 1st Court, Barrackpore in Criminal Revision No. 189 of 2020 wherein the learned Sessions Judge was pleased to set aside the order dated 22.06.2020 passed by the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas thereby allowing the prayer for bail of the petitioner in connection with Bhatpara P.S. Case 158 of 2020 dated 03.04.2020.

Records reflect that the present petitioner surrendered before the learned Additional Chief Judicial Magistrate, Barrackpore on 22.06.2020 and on the same day, he was granted bail with no objection from the learned A.P.P. It is reflected from the order dated 22.06.2020 passed by the learned Additional Chief Judicial Magistrate, Barrackpore, that the materials available were the FIR and the case records. As the Investigating Officer was not present before

the court with the case diary, so there was no scope for the learned Additional Chief Judicial Magistrate, Barrackpore to consider the merits of the matter including the gravity and nature of the offence, more particularly in a case under Section 409 of the Indian Penal Code.

Subsequently it was found that the State was aggrieved by the order passed by the learned Additional Chief Judicial Magistrate, Barrackpore and a revisional application was preferred before the learned sessions court and the learned Additional District and Sessions Judge, 1st Court, Barrackpore was pleased to set aside the order dated 22.06.2020 directing the present petitioner to surrender before the learned Additional Chief Judicial Magistrate, Barrackpore within 15 days from the date of the said order.

The learned advocate for the petitioner very rightly points out that when there is a specific provision under the Code of Criminal Procedure, the State could not have invoked the revisional jurisdiction for cancelling the bail which was already granted to the petitioner. The proper course to be adopted should have been under Section 439(2) of the Code of Criminal Procedure. To this aspect, I do not find that there is any flaw in the submission so advanced by the learned advocate for the petitioner.

Mr. Mukherjee, learned Public Prosecutor submits a report of the Investigating Officer of the case. Let the said report dated 18.12.2020 be kept with the record.

I have taken into account the totality of the circumstances which has been created because of the order

passed by the learned Magistrate and that of the learned Sessions Judge. Under such circumstances, although I find that the merits of the order of the learned sessions court is in favour of the State/prosecution, but the provision so invoked was not in accordance with law. So far as the order passed by the learned Magistrate is concerned, the same should have been passed after a notice was served upon the investigating agency and after the case diary was produced before the court. In view of such fact, I am unable to agree with the order passed by the learned Additional Chief Judicial Magistrate, Barrackpore on 22.06.2020.

Having regard to the precarious circumstances which arose because of the order passed by both the learned courts below, I am constrained to set aside the orders passed by both the learned courts below. Under such circumstances, I direct that the petitioner should surrender/appear before the learned Additional Chief Judicial Magistrate, Barrackpore on 23.12.2020.

The Investigating Officer of the case should be present along with the case diary and with the prayer that if police custody of the present petitioner is warranted in connection with the instant case.

Once the petitioner appears and prays for bail and the investigating agency also appears and prays for police custody, the learned Additional Chief Judicial Magistrate, Barrackpore will freshly consider both the prayers in accordance with law.

It is very disturbing that on 22.06.2020, that a conflict of interest is reflected wherein the Investigating Officer of the State is dissatisfied with the learned A.P.P. who has raised no objection in the bail application of the present petitioner which was taken up by the learned Additional Chief Judicial Magistrate, Barrackpore, as it is the submission of the State that the Investigating Officer was neither consulted nor any information was sent.

In view of such submission, I direct the Legal Remembrancer, West Bengal to conduct an enquiry regarding the learned A.P.P. who represented the State in this case before the learned Additional Chief Judicial Magistrate, Barrackpore on 22.06.2020 and if dissatisfied, the Legal Remembrancer will be at liberty to take steps in accordance with law.

The Investigating Officer of the case is present in Court. His further appearance before this Court is dispensed with.

With the aforesaid observations, CRR 1781 of 2020 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the necessary formalities.

(Tirthankar Ghosh, J.)