

02.03.2021
Item no.12
Ct. No.42
CHC

**C.R.R. No.504 of 2021
(Physical Hearing)**

In Re:- An application under Sections 401/482 of the Code of Criminal Procedure, 1973.

And

In the matter of:-

Rahul Kuddus Molla
.....petitioner

Mr. Anand Keshri,
Mr. Sekhar Mukherjee,
Mr. Gourav Kumar
.....for the petitioner

Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Manoranjan Mahata
...for the State

Affidavit-of-service filed in Court be taken on record.

The impugned order dated 8th February, 2021 passed by the Learned Additional Sessions Judge, 6th Court, Paschim Medinipur in connection with Sessions Case No.7(12) 2016 arising out of Kharagpur GRPS Police Station Case No.91 of 2016, dated 17th May, 2016 under Sections 395/397/412 of the Indian Penal Code read with Sections 25/27 of the Arms Act refusing to release the petitioner on bail, in spite of the amalgamation of Gosaba Police Station Case No.88 of 2016 dated 18th May, 2016 being allowed, is the subject of challenge in this revisional application.

Mr. Anand Keshri, learned advocate representing the petitioner adverted to a piece of paper, shown in page 40 being 'Annexure-P2' to the instant revisional application vide Memo No.1314 dated 9th June, 2016 submits that learned Additional Chief Judicial Magistrate (I.C.), Bengal File, Alipore, South 24 Parganas by his communication dated 9th June, 2016, addressed to learned Chief Judicial Magistrate, Paschim Medinipur Court, allowed amalgamation of Gosaba Police Station Case No.88 of 2016 dated 18th May, 2016 on the prayer of the concerned I.O. of Gosaba Police Station.

It is contended by the learned advocate for the petitioner that in spite of receiving the relevant case record from the concerned Gosaba Police Station, the petitioner could not be released on bail causing serious prejudice to the petitioner.

Learned advocate further contends that petitioner has already been released on bail from Kharagpur GRPS Police Station Case No.91 of 2016 dated 17th May, 2016 under Section 395/397/412/120B of the Indian Penal Code read with Sections 25(i)(a)/27/35 of the Arms Act vide C.R.M.9470 of 2020. The copy of the bail order is also brought to the attention of the Court (vide page 41 being Annexure P-3 to the application).

Mr. Sur, learned advocate representing the State submits that the offence complained of in Gosaba Police Station Case and the instant case giving rise to C.R.R.504 of 2021 is not same and identical. It is thus submitted by Mr. Sur that petitioner is involved in connection with Kharagpur GRPS Police Station Case

No.91 of 2016 giving rise to the instant revisional application under Sections 395/397/412/120B of the Indian Penal Code and under Sections 25(i)(a)/27/35 of the Arms Act, while the offence complained of in Gosaba Police Station Case No.88 of 2016 dated 18th May, 2016 is relatable to offence under Sections 379/413 I.P.C. read with Sections 25(1)(a)/27 of the Arms Act.

The crux of the contention raised by the petitioner in simpliciter is that despite the case being amalgamated as per order of the learned A.C.J.M. Alipore, vide its communication dated 9th June, 2016, the learned trial court being learned Additional Sessions Judge, 6th Court, Paschim Medinipur refused to entertain the prayer for bail of the petitioner thereby declining to release the petitioner on bail, in terms of the bail order being granted by Division Bench of this Court in C.R.M.9470 of 2020.

Having considered the rival submission of both the parties, it appears that the Division Bench granted bail to petitioner by its order dated 1st December, 2020, while the order of the learned A.C.J.M, Alipore, proposing amalgamation was made on 9th June, 2016, the reference of which could have been well brought before the Division Bench at the time of entertaining bail application.

It is submitted by learned advocate for the petitioner that the petitioner had no adequate information about amalgamation of the two cases, one pertaining to Gosaba Police Station and another relating to Kharagpur GRPS Police Station, and as a result thereof the same could not be mentioned before the Division Bench at the time, when the petitioner was granted bail.

The communication made by the learned A.C.J.M., Alipore, allowing amalgamation vide Memo No.1314 dated 9th June, 2016 is not supported by any corresponding order of learned Magistrate at the moment. It is further evident from the impugned order that the learned A.C.J.M., Alipore has only transferred ordersheets from 19th May, 2016 to 6th June, 2016 of Gosaba Police Station Case to the learned Chief Judicial Magistrate, Paschim Medinipur. Therefore, the entire record appears to have not been transmitted to the learned Chief Judicial Magistrate, Paschim Medinipur, while allowing the proposed amalgamation.

Since the petitioner is in custody and more so, the petitioner has already been released on bail by order of the Division Bench of this Court in C.R.M.9470 of 2020, the learned trial court below is obliged, under such circumstances, to call for the relevant case records of the Gosaba Police Station Case, mentioned above, and upon receipt of the relevant case records, the bail application, if any, filed by the petitioner, the same shall be disposed of without causing any delay, bearing in mind that the petitioner has already been granted bail from Kharagpur GRPS Case No.91 of 2016.

It is thus, clarified that while making consideration of the prayer of the bail of the petitioner afresh, the trial court must endeavour to ascertain the corresponding order of the learned A.C.J.M., (I.C), Bengal File, Alipore vide Gosaba Police Station Case No.88 of 2016, dated 18th May, 2016 in the ordersheets, ordinarily recorded by the learned Magistrate, and upon ascertaining the same, the necessary order in accordance with the

law may be recorded providing sufficient opportunity of hearing to either of the parties to this case.

This order will not however, preclude the petitioner from seeking any modification of bail order being granted in C.R.M.9470 of 2020, dated 1st December, 2020 showing the amalgamation, if there be any.

With this direction/observation, the instant revisional application stands disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)