

07.09.2021
Sl. No.146
Court No.34
BM

CRR 731 of 2020

Jayashri Bera @ Joyashree Bera @ Joyeshree Bera

Vs.

State Of West Bengal

Mr. Prabir Mitra
Mr. Pinak Mitra ... for the petitioner

Mr. S.G. Mukherji, learned Public Prosecutor
Mr. Arijit Ganguly
Ms. Manisha Sharma ... for the State

Mr. Mitra, learned advocate for the petitioner submits that by an order dated 8.5.2015 the petitioner was granted anticipatory bail by a Division Bench of this Hon'ble Court in CRM No.17225 of 2014.

Learned advocate also files certified copy of the order dated 20.11.2019. Let the said certified copy be kept with the record. The said order reflects that the charge sheet was submitted by showing the present petitioner namely Jayashri Bera as absconder and consequently the learned Magistrate was pleased to issue warrant of arrest against present petitioner.

Mr. Mitra draws attention of the Court to the charge sheet which at the relevant part at sl. No.11 referring to accused no.2 reflects that it was well within the knowledge of the investigating agency that the petitioner was granted anticipatory bail and

obviously the recording in the order that the petitioner is absconding compelled the learned Magistrate for issuing non-bailable warrant.

In view of the statutory provisions of law incorporated in sub Section (3) of Section 438 of Cr.P.C in cases where the petitioner is granted anticipatory bail the learned Magistrate at the first instance should issue bailable warrant is a settled proposition of law.

Having regard to the same, I am of the view that so far as the present petitioner is concerned non-bailable warrant of arrest was issued by not adhering to the provision of law and as such the same is required to be set aside.

As more than one and half years have passed in the meantime, I direct the petitioner to surrender before the jurisdictional court by 30th September, 2021 and if the petitioner so surrenders the learned Magistrate will release the petitioner on bail on such terms and conditions as the learned Magistrate deem fit and proper preferably by adhering to the order passed by the Hon'ble Division Bench of this Hon'ble Court in CRM No.17225 of 2014.

In case the petitioner do not surrender by 30th September, 2021 the learned Magistrate will be at liberty to issue non-bailable warrant of arrest on 4th October, 2021 and takes steps for executing the same in accordance with law.

With the aforesaid observations CRR 731 of 2020 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The learned Additional Chief Judicial Magistrate, Haldia is directed to act on the server copy of this order downloaded from the official Website of the Hon'ble High Court at Calcutta.

(Tirthankar Ghosh, J.)