

18.08.2021

Court No.28
Item No.12
(Allowed)

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&
As

CRM 3466 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Nandigram Police Station Case No. 75 of 2007 dated 30.04.2007 under Sections 147/148/149/448/302/506 of the Indian Penal Code and Section 27 of the Arms Act. (G. R. Case No. 237 of 2007);

And

In the matter of : **Rabisankar Das.**

...Petitioner

Ms. Minoti Gomes,
Mr. Mazhar Hossain Chowdhury,
Ms. Arina Bhattacharya.

...For the Petitioner

Mr. Saibal Bapuli,
Mr. Arani Bhattacharyya.

...For the State.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with Nandigram Police Station Case No. 75 of 2007 under Sections 147/148/149/448/302/506 of the Indian Penal Code and Section 27 of the Arms Act.

It is really an unfortunate and shocking state of affairs that the petitioner has been apprehended as absconder despite the fact that he was extended the benefit of Section 438 of the Code of Criminal Procedure by this Court. The case was initiated way back in the year 2007 implicating the petitioner as an accused therein, who applied for an anticipatory bail before this Court, which was allowed subsequently.

It is not in dispute that the petitioner was attending the Court case before a decision was taken by the Government not to proceed with the said case. Consequently an application under Section 321 of the Code of Criminal Procedure was taken out, which was mechanically allowed by the concerned Court. The matter was taken to this Court in Writ jurisdiction and the order annexed to the instant application would reveal that the said order allowing the application under Section 321 of the Code of Criminal Procedure was

stayed and a direction was passed upon the concerned Court to deal with the matter in accordance with law.

Subsequently the case was restored to its original file and it appears from the impugned order dated 15th March, 2021 that a direction was passed upon the accused persons, who have been granted bail upon furnishing bail bond, were directed to refurnish the fresh bail bond, as the then sureties stood discharged.

Apropos such observation the order was passed for issuance of notice upon the accused persons, who were enlarged on bail and simultaneously fresh warrant of arrest was issued against the absconded accused persons, which unfortunately includes the name of the petitioner in serial no. 7 thereof.

Mr. Bapuli, learned Advocate appearing for the State, opposes the prayer for bail and submits that there are incriminating materials against the petitioner, which would be evident from the statement of the eye-witnesses recorded under Section 161 of the Code of Criminal Procedure.

We are amazed with the aforesaid submissions for the simple reason that despite the existence of such materials on record a decision was taken not to proceed with the case and, in fact, the application under Section 321 of the Code of Criminal Procedure was taken out, which was eventually allowed.

We do not want to delve further deep in to the matter by making any remarks thereupon and confine ourselves to the fact, which is evident from the record. The moment the case was dropped and the accused named therein was discharged, upon revival thereof it is a paramount duty of the Court as also the prosecution to serve notice upon them so that they can make aware of the resurrection of such proceeding and to comply the conditions incorporated in an order granting bail or anticipatory bail.

From the Memo of Evidence produced by Mr. Bapuli in course of hearing it appears that the petitioner was extended the benefit of Section 438 of the Code of Criminal Procedure by this Court and cannot be termed and treated as absconder for the purpose of issuance of fresh warrant of arrest and apprehending them in connection therewith. There is a complete lack of synergy between

the prosecution and the dealing judicial officer; and the true and correct state of affairs have not been divulged for the reasons known to the prosecuting officer.

Since we find that the application for anticipatory bail was allowed by this Court the detention on revival of the proceeding without notice is not permissible, as the person is denied of his right to be heard before he is apprehended.

We thus allow the application for bail.

Accordingly, the petitioner, **Rabisankar Das**, shall be released on bail upon furnishing a bond of Rs.10,000 /- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Haldia, subject to the condition that the petitioner shall make himself available on each day of listing of the matter before the Court and the default on any solitary occasion without any justifiable cause may disentitle him to the privilege of bail granted by this Court without further reference to this Court.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)