

11.01.2021

CRM 8638 of 2019

In the matter of : Tanushri Mitra & Anr.

...the petitioners.

Mr. Debapratim Guha
Ms. Anchita Sarkar

... for the petitioners

Ms. Baisali Basu

... for the State

Mr. Saurav Chatterjee
Mr. Aniruddha Bhattacheryya

... for the O.P N.2.

This is an application for cancellation of bail of Barnali Biswas nee Das, opposite party No.2 herein, an accused in connection with Shakespeare Sarani Police Station Case NO.311 dated 9th December, 2018 under Sections 420/406/120B of the Indian Penal Code.

The above mentioned P.S Case was suo motu instituted by the police on the allegation that the opposite party No.2 in connivance with others floated an online advertisement in respect of an agency under the name and style of Link Abroad Communication Centre, having its office at Chatterjee International Centre, 33A, Jawaharlal Nehru Road and declared that the said agency would provide and secure better job opportunities and higher education in Canada and other foreign

countries. By floating such advertisement, the opposite party No.2 and her associates induced and lured many young men and women and took substantial amount of money on the promise of arranging either job or higher education in Canada. As for instance, petitioner No.1 paid a sum of Rs.32 lakhs and petitioner No.2 paid more than Rs.15 lakhs to the such agency on the pretext of various charges, such as, security deposit, registration fees, provincial nominee programme etc. Opposite party No.2 and her associates failed to provide any job or make suitable arrangement for higher education in foreign countries as per their promise. On several occasions, police attached to Shakespeare Sarani Police Station received complaints to the effect that the opposite party No.2 and her associates in the name of their purported agency committed cheating of innocent, unemployed young men and women and students having desire to pursue their higher studies in the abroad. The opposite party No.2 was arrested by police on 30th January, 2019 and she was granted interim bail on 16th February, 2019 by the learned Chief Metropolitan Magistrate.

It is alleged that immediately after her release on interim bail, the opposite party No.2 started threatening the victims of the instant case so that they might not give evidence against her. The petitioner No.1 was threatened with dire consequences on 11th April, 2019 by opposite party No.2 outside the court room of the learned Chief Metropolitan Magistrate. She immediately lodged a written complaint before Hare Street Police Station on the basis of

which a case Under Section 195A/506/114 of Indian Penal Code was registered against her.

The petitioner No.1 preferred an application for cancellation of bail of the opposite party No.2 stating, inter alia, that she was being threatened by the opposite party No.2 with dire consequences and upon hearing, the learned Chief Metropolitan Magistrate vide his order dated 17th June, 2019, cancelled the bail granted to her and took her into custody. The opposite party No.2 preferred an application under Section 439 of the Code of Criminal Procedure and vide order dated 5th July, 2019 she was released on interim bail. The petitioners came to know that recently the opposite party No.2 has started the same business by floating online advertisement inviting applications for admission for the session 2020. She is also giving false promise to the witnesses including the petitioners that she would send them to Canada if they withdraw Shakespeare Sarani Police Station Case No.311 instituted against her. It is alleged by the petitioners that the learned Chief Judge, City Sessions Court granted interim bail to the opposite party No.2 vide order dated 5th July, 2019 without considering the fact that the petitioners are being threatened with dire consequences and physical harm by opposite party No.2 and her associates if they dare to adduce evidence against her. The learned Chief Judge also did not consider that the petitioner No.1 was manhandled and abused by opposite party No.2 at Bankshall Court premises and the fact was recorded by the learned Chief Metropolitan Magistrate in his order while cancelling bail of the

opposite party No.2. Accordingly, the petitioners have prayed for cancellation of interim bail granted to the opposite party No.1 by the learned Chief Judge, City Sessions Court.

Learned Advocate for the petitioners submits that they are not only the vital witnesses of Shakespeare Sarani Police Station Case No.311 but also victims within the meaning of Section 2(wa) of the Code of Criminal Procedure. They sustained huge monetary loss and all their hopes and aspirations were shattered. They were cheated by the opposite party No.2. She misappropriated huge amount of money and threatened and manhandled the petitioner in the precincts of the Court.

From the order of the learned Chief Metropolitan Magistrate it is clear that the opposite party No.2 was terrorizing the petitioners who are the witnesses of the cases.

The officer-in-charge of Shakespeare Sarani Police Station has submitted a report where from it is ascertained that as many as six criminal cases of cheating, criminal appropriation of money and criminal conspiracy are pending against the opposite party No.2. However, the Officer-in-Charge of Shakespeare Sarani Police Station did not receive any adverse complaint against the opposite party No.2 after she was granted bail by the learned Chief Judge, City Sessions Court.

It is however found from the report of the Officer-in-Charge Here Street P.S that on 11th April, 2019 Here Street P.S received a complaint against opposite party No.2 to the effect that she was threatening the petitioners with dire consequences. On the basis of

the said complaint Here Street P.S Case No.115 dated 11th April, 2019 under Section 195A/506/114 of the Indian Penal Code was registered and investigation of the said case ended in charge-sheet. Learned Advocate for the petitioners referred to the said report submitted by the Officer-in-Charge of two police stations against opposite party No.2 and submits that filing of charge-sheet against opposite party No.2 in a case under Section 195A/506/114 I.P.C goes to suggest that prima facie case against her has been established.

Learned Advocate for the petitioners further refers to an unreported decision of this Court in CRM No.2757 of 2015 dated 24th June, 2015. He refers to paragraph 9 of the aforesaid unreported judgment and submits that the impugned order was passed on the basis of irrelevant materials being considered by the Court while granting interim bail to the opposite party No.2. The impugned order itself is perverse and is liable to be cancelled.

Mr. Saurav Chatterjee, learned Advocate for the opposite party No.2, on the other hand, has pointed out at the outset that the petitioners are not the defacto complainants of this case. Impugned order of interim bail was passed by the learned Chief Judge, City Sessions Court vide order dated 5th June, 2019. The learned Chief Judge was pleased to grant interim bail to the opposite party No.1 on the ground of her illness and she had to go to Chennai for her medical treatment. After granting interim bail, by the learned Chief Judge, there is no report against the opposite

party No.2 to the effect that the petitioners were directly or indirectly threatened by her.

Referring to the decision of the Hon'ble Supreme Court in **Dolat Ram & Ors. vs. State of Haryana** reported in (1995) 1 SCC 349, it is submitted by Mr. Chatterjee that rejection of bail in a non bailable case at the initial stage and cancellation of bail which was granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. The Hon'ble Supreme Court broadly detailed out the grounds for cancellation of bail as hereunder:-

- i) Interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice.
- ii) Abuse of the concession granted to the accused in any manner.
- iii) Satisfaction of the court, on the basis of material placed on record of the possibility of the accused absconding and likelihood of or actual misuse of bail.

If the above circumstances are proved against an accused, his bail may be cancelled. In the instant case there is no material to hold that the opposite party No.2 has been interfering or admitting to interfere with the due course of administration of justice. She is not evading due course of administration of justice. She has not abused the conditions for bail. She has not

absconded. Therefore, there is no reason to cancel bail of the opposite party No.2.

On the similar score, the learned Advocate for the opposite party No.2 refers to another decision in the case of **Savitri Agarwal & Ors. vs. State of Maharashtra & Anr.** reported in **(2009) SCC 325.**

Mr. Chakraborty categorically refers to the following observation of the Hon'ble Supreme Court in the above mentioned report:-

“Moreover, merely because the High Court had a different view on same set of material which had been taken into consideration by the Sessions Judge, in our view was not a valid ground to label the order passed by the Sessions Judge as perverse.”

According to Mr. Chatterjee non-consideration of the allegation that the petitioner No.1 was threatened and manhandled by the opposite party No.2 inside the court premises by the learned Chief Judge, City Civil Court cannot be a ground for cancellation of her bail, especially when no allegation of similar nature was made against her after she was granted interim bail by the learned Chief Judge, City Sessions Court.

Considering the facts and circumstances of the case and having heard the learned Advocates appearing for the parties, I am of the view that the allegation against the opposite party No.2 is serious and grave. As many as seven criminal cases of cheating criminal misappropriation and criminal conspiracy are pending

against her. Pendency of series of cases against her suggests that she is not an occasional wrong doer but a seasoned offender.

In **Dolat Ram** (supra) the first ground for cancellation of bail is interference or attempt to interfere by an accused with the due course of administration of justice. Administration of criminal justice starts from investigation and culminates with delivery of judgment. From the order recorded by the learned Chief Metropolitan Magistrate it is found that the opposite party No.2 threatened and manhandled the petitioner No.1 in his court premises. The matter was informed by petitioner No.1 and a case under Section 195A/506/114 of the Indian Penal Code was registered by Here Street P.S. In the said case charge-sheet has been submitted against the opposite party No.2. From the conspectus of facts and circumstances, it is clear the opposite party No.2 runs a big racket and it is not difficult for her to terrorize the witnesses. Therefore, relying on the decision of this Court in the case of **Paresh Chandra Naskar vs. Swapan Naskar & Ors** reported in **1993 C Cr LR (Cal) 146**, I am of the view that impugned order of interim bail passed by the learned Chief Judge, City Sessions Court in favour of the opposite party No.2 is perverse for non-consideration of the incident of terrorizing the witnesses.

For the reasons stated above CRM No.8638 of 2019 is allowed.

Interim bail granted to the opposite party No.2 on 5th July, 2019 is cancelled.

The surety of the opposite party No.2 is directed to produce her before the learned Chief Metropolitan Magistrate forthwith, failing which learned Magistrate is at liberty to issue nonbailable Warrant of Arrest against the opposite party No.2.

CRM 8638 of 2019 is thus disposed of.

(Bibek Chaudhuri, J)