

11.06.2021

Sl. No. 16

Srimanta

Ct. No. – 19

D/L

**CRM/8991/2018
(Via Video Conference)**

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, 1973.

In the matter of : Om Prakash Singh.

... petitioner.

Mr. Somoprioyo Chowdhury, Adv.,
Mr. Abhishek Bhandari, Adv.,
Mr. Dipayan Dan, Adv.

...for the petitioner.

Mr. P. K. Datta, A.P.P.,
Mrs. Sukanya Bhattacharjee, Adv.,
Mr. Santanu Deb Roy, Adv.

...for the State.

I have heard the learned Advocate for the petitioner and the learned Public Prosecutor-in-Charge.

The de facto complainant in the instant case is the authorized person of M/s. Instakart Services Private Limited. The said company provides back up service to different online service providers, like Amazon, Flipkart etc.

Opposite party nos. 3 and 4 were engaged by Instakart as delivery boys. They were handed over some packets containing Samsung S-8 mobile phones for delivery to the purchasers. They in association and active help of opposite party nos. 5 and 6 tampered the seal of the packet, took away the said high end mobile phones and replaced them with low quality of mobile phones, resealed the same and delivered them to the purchasers. The opposite party nos. 3 to 6 were arrested on 14th August, 2018. They were sent to police custody for two days and on 17th August, 2018 when they were produced by the police without recovery of the misappropriated/stolen articles, they were granted bail by the

learned A.C.J.M., Alipore. While in custody Danis Ali (opposite party no. 6) made a statement that he delivered the said mobile phones to opposite party no. 2 to hand them over to one Rafiq of Burdwan to sell the said mobile phones to different persons. Leading to the said statement the opposite party no. 2 was arrested on 15th August, 2018. While he was in custody of police after his arrest he made a statement to the effect that he already transferred the said mobile phones to one Rafiq of Burdwan and if he was given opportunity he would lead the police to identify Rafiq and recover of the said articles.

On 16th August, 2018 opposite party no. 2 was produced before the learned A.C.J.M., Alipore and without considering the statement of the accused the learned A.C.J.M. granted bail to opposite party no. 2 on the ground that the stolen mobile phones were not recovered from opposite party no. 2, Rupak Saha @ Aniket.

I have carefully perused the Case Diary. Learned A.C.J.M., Alipore ought to have considered the prayer of the Investigating Officer to give him an opportunity to verify the statement of Rupak so that the kingpin of the entire syndicate, namely Rafiq might be apprehended and the misappropriated articles might be recovered. But, the learned A.C.J.M. did not give any opportunity to the Investigating Officer. Under such circumstances, the order for granting bail to Rupak Saha is bad in law and was passed without consideration of materials-on-record. Therefore, the order of bail dated 16.08.2018 granting bail to Rupak Saha is cancelled under Section 439(2) of the Code of Criminal Procedure. The Investigating Officer is at liberty to rearrest him and take step for recovery of misappropriated/stolen Samsung S-8 mobile phones as per his statement dated 15th August, 2018.

Prayer for cancellation of bail of remaining opposite parties is considered and rejected.

The Investigating Officer is directed to carry out the above order within three weeks from the date positively.

Parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)