

30.06.2021  
Item no.6  
Ct. No.34  
CHC

**C.R.M. No.11941 of 2015**  
**(Through video Conference)**

In Re: An application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Rameswar Chakraborty  
... petitioner

Mr. Arindam Jana  
...for the petitioner

Mr. S. G. Mukherji, Ld. P.P.  
Md. Anwar Hossain,  
Ms. Sreyashee Biswas  
...for the State

Mr. Santanu Mukherjee  
...for the opposite parties

Affidavit-of-service so filed be kept with record.

An accommodation has been prayed for on behalf of the learned advocate appearing for the opposite parties. I find that the present application has been pending since the year 2015 and the petitioner approached this Court within a reasonable period of time.

Mr. Jana, learned advocate appearing for the petitioner draws attention of this Court to the order passed in C.R.M.17916 of

2014, wherein, a Division Bench of this Court was pleased to reject the prayer for anticipatory bail of the accused/opposite party nos.2, 3, 4 and 6. While dismissing the said application for anticipatory bail, it was categorically observed:

*“The statement under Section 161 of the Code of Criminal Procedure makes very serious allegations against these petitioners. We are, therefore, satisfied that no case for anticipatory bail has been made out.”*

Thereafter, on completion of investigation the investigating agency submitted a charge-sheet and Warrant of Arrest was issued against the accused/opposite party nos.2 to 8. Assailing the issuance of Warrant of Arrest on May 14, 2015 in C.R.R.1498 of 2015 and suppressing all the materials particulars, the petitioner approached this Court when the execution of Warrant of Arrest was stayed for a period of six weeks and a direction was passed so that the accused/opposite parties can surrender before the learned jurisdictional Magistrate within a period of four weeks. The accused/opposite parties by suppressing the order of rejection to anticipatory bail only produced the order passed by a Single Bench in C.R.R.1498 of 2015 and impressed the Court.

The conduct of the accused/opposite parties as such are questionable, while obtaining the order of interim bail on 10.06.2015. I also find that learned A.P.P. who appeared before the court below submitted that as charge-sheet has already been submitted, custodial detention of the accused persons were not necessary.

The bail order which was passed by the learned Magistrate was obtained by fraud. It was incumbent upon all the parties to place the records pertaining to the case and thereafter, leave it to the discretion of the learned Magistrate for considering the application for bail. I am also dissatisfied with the State as it was also their duty to point out before the court that the anticipatory bail application of the accused/opposite parties were rejected.

Earlier, when the matter was called Mr. Anwar Hossain, learned advocate appearing for the State was directed to submit a report before this Court regarding the post bail conduct of the accused/opposite party nos.2 to 8. The report so submitted do not reflect that there has been any violation of condition of bail till date after the same was passed by the learned Magistrate.

On query from this Court, Mr. Jana, learned advocate appearing for the petitioner submits that the evidence of the petitioner has been completed.

Having regard to the manner in which bail was obtained by the accused/opposite party nos.2 to 8, I reiterate that fraud has been committed upon the court while obtaining the order of bail. Learned Magistrate was kept in dark regarding the rejection of anticipatory bail. What would have been the consequences of such rejection of anticipatory bail passed by a Division Bench of High Court, in case same was brought to the notice of the learned Magistrate was known to the accused persons and yet they chose not to disclose the same. The order dated 10.06.2015 does not also reflect regarding any order being passed by the Division Bench of this Court.

As in the meantime, substantial progress has taken place, I am not inclined to interfere at this stage with the order dated 10.06.2015. But as the order dated 10.06.2015 was passed by suppressing material facts, I direct the learned jurisdictional trial court to re-consider the bail of the present accused/opposite party nos.2, 3, 4 and 6 after taking into account the order passed in C.R.M.17916 of 2014 and the learned Court would also take into account subsequent conduct of the accused/opposite parties, the materials appearing in the Case Diary while considering such application for bail.

The order of bail passed in respect of accused/opposite party nos.2, 3, 4 and 6 are presently modified to the extent that the said bail order would survive till 31<sup>st</sup> of August, 2021. The accused/opposite party nos.2, 3, 4 and 6 would appear before the learned jurisdictional trial court on 2<sup>nd</sup> of August, 2021 when the learned court will fix the date for reconsidering their bail application after affording opportunity to the accused persons as well as the State.

Needless to state that the learned jurisdictional trial court will not be swayed by any observation made by this Court and would consider the bail application in its true and proper spirit.

In case, the accused/opposite parties are not available before the learned jurisdictional trial court by 31<sup>st</sup> August, 2021, in that case, the learned court would be at liberty to exhaust harsher process of law on 01.09.2021.

With the aforesaid observations, C.R.M.11941 of 2015 is disposed of.

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

**(Tirthankar Ghosh, J.)**