

22.03.2021

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Ct. 30

CRM 7344 of 2020

With

CRAN 1 of 2020

(Via Video Conference)

In Re: an application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail in connection with Golabari Police Station Case No.220 of 2020 dated 10.08.2020 under Sections 420/406 of the Indian Penal Code (G.R. No. 3726 of 2020).

And

In the matter of:

Maifuz Alam

Vs.

The State of West Bengal & anr.

Mr. Imtiaz Ahmed
Mr. Ghazala Firdaus
Mr. Sk. Saidullah
Ms. Smita Saha
Mr. Supriya Majumder
Ms. Arunima Mukhopadhyay
Mr. Debopam Roy
..for the petitioner

Though copy of the instant application was served at the office of the learned Public Prosecutor, High Court, Calcutta, none appears on behalf of the State of West Bengal. Learned P.P. is to look into the matter personally that in many matters the State remains unrepresented. If the similar thing is going on in future, this Court will have no

other alternative but to refer the matter before the learned Legal Remembrancer, Government of West Bengal.

This is an application for cancellation of bail granted by the learned Chief Judicial Magistrate in connection with Golabari Police Station Case No.220 of 2020 dated 10.08.2020 under Sections 420/406 of the Indian Penal Code (G.R. No. 3726 of 2020).

At the outset, I like to state gist of the F.I.R. There was a talk of development of a residential house of the de facto complainant with the accused. After initial talk being satisfied the de facto complainant and the accused had entered into an agreement for development of premises No.408 G.T. Road, Howrah within P.S. Golabari. The F.I.R. also shows that after completion of construction work some tenants were inducted by the accused and possession was handed over to them. Till date Rs.25150000/- has been spent for construction and development of the said property by the de facto complainant. The de facto complainant gave the accused loan of Rs.25 lakhs as interest free loan on duly executed money receipt in presence of the witnesses. However, since March, 2020 the de facto complainant went on requesting him to clear the outstanding loan of Rs.25 lakhs but the accused failed and neglected to repay the said amount. Thus, it is alleged that the petitioner has misappropriated the said amount and committed cheating upon the de facto complainant.

On registration of Golabari P.S. Case No.220 of 2020, the accused was arrested. He was taken to police custody for five days. During police custody no special evidence could be collected by the Investigating Officer. When the accused was placed before the learned C.J.M., Howrah, he vide order dated 24th August, 2020 was granted bail to the accused on the ground mainly that the dispute is civil in nature.

It is pointed out by Mr. Ahmed, learned advocate for the de facto complainant /petitioner that the petitioner gave a sum of Rs.25 lakhs in installment to the accused in presence of witnesses against receipt. The said amount was misappropriated. Therefore, the specific act done by the accused establishes ingredients of offence under Section 406/420 of the Indian Penal Code. It is also submitted by him that there is a very thin difference between violation of contractual agreement and offence of criminal breach of trust and cheating. When the accused obtained loan from the de facto complainant and it was not paid by him he commits offence of criminal breach of trust and cheating. It is specially because the deed of development agreement did not postulate any such condition that the de facto complainant was making payment of loan to the accused.

Having heard the learned advocate for the petitioner and on perusal of the entire record as well as the impugned order it is not disputed that the opposite party No.2 as one of the owners of property executed a development agreement

of property with the de facto complainant. Money was paid for development of the agreement on loan. The grievance of the petitioner is that the police authority could not recover the amount of loan which the accused accepted but the learned Chief Judicial Magistrate, Howrah granted him bail without securing the de facto complainant's money which was paid to the accused as loan for development of the property in question.

Having heard Mr. Ahmed I do not find any reason to cancel the bail of the accused. However, as a condition for bail, the accused is directed to meet the Investigating Officer once in a fortnight during the period of investigation. The Investigating Officer shall ascertain from the accused as to whether he will repay the entire loan amount with interest to the de facto complainant or not during investigation of the case. If he fails, criminal investigation shall continue.

Both CRM 7344 of 2020 and CRAN 1 of 2020 are accordingly disposed of.

(Bibek Chaudhuri, J.)