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December
10, 2021
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C.R.M. No.9457 of 2020
(Via Video Conference)

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

Smt. Manashi Das
Versus
The State of West Bengal & Anr.

Mr. Kamalesh Chandra Saha,
Ms. Payel Mitra,
Mr. M. Saha.
...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Ms. Sonali Das.
...for the State.

Affidavit-of-service filed by the petitioner be kept with the record.

Pursuant to the order dated 08.12.2021, a report has been submitted by the concerned Officer of Madhyamgram Police Station dated 09.12.2021. Let the report be kept with the record.

The earlier order of this Court directed the State to clarify whether the case diary was produced on 5th October, 2020.

Today, a report has been received which states the following:-

“(iii) It is worth to be mentioned here that no message as well as no other order sheet was received from Ld. Court to produce the case diary on 05.10.2020. As such the case diary was not produce before the Ld court on 05.10.2020.”

In view of the directions and guidelines set out by the Hon'ble Supreme Court in an unreported case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** in Special Leave to Appeal (Crl.) No(s).5191 of 2021, I hereby direct all the Chief Judicial Magistrates, Additional Chief Judicial Magistrates and the Magistrates who would be considering bail application on appearance and surrender of the accused either during pendency of the investigation or after submission of the charge-sheet to follow the guidelines specified therein. To that effect, the following paragraphs of the said judgement is quoted:

“After filing of charge-sheet/complaint taking of cognizance

- (a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.
- (b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.
- (c) NBW on failure to failure to appear despite issuance of Bailable Warrant.
- (d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- (e) Bail applications of such accused on appearance may

be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.”

It is clarified henceforth that when an accused appears or surrenders before the learned Magistrate and the court is of the opinion that the custody is unwarranted in particular circumstances of the case, it would grant interim bail and fix a date calling for the case diary and it is only after perusal of the case diary, the court should confirm the interim bail. In both the circumstances, the court should give an audience to the public prosecutor concerned. The court should also insist for scrutiny as to whether the person who is surrendering, his previous application for anticipatory bail has been rejected by any higher forum. Sole consideration of compliance of Section 41A of Cr.P.C. without considering the case diary, the development of the case cannot be a ground for confirming the bail or passing a permanent order of bail. The learned courts are directed to strictly adhere to the guidelines set out by the Hon’ble Supreme Court. In the aforesaid judgment

as it has been categorically stated that bail should be granted on merits of the case and the post bail conduct or compliance of Section 41A Cr.P.C. are only additional factors for final consideration of bail application.

The Registrar (Judicial Service), High Court, Calcutta is directed to circulate this order to all the Magistrates who are taking up bail matters in the State of West Bengal.

In this particular case, I find in the order dated 5.10.2020, the learned ACJM, Barasat was pleased to finally dispose of the bail application and the same was without perusal of the case diary.

In view of the aforesaid, the order dated 5.10.2020 is modified to the extent that the bail order may be treated as an interim order which will be existing till 31st January, 2022.

In the meantime, the Inspector-in-Charge, Madhyamgram Police Station will serve a notice upon the accused person for appearance before the learned ACJM, Barasat.

The learned court would fix a date after informing the public prosecutor regarding the production of the case diary and thereafter dispose of the application for bail.

Needless to state, I have not gone into the merits of the case neither I have considered the post bail conduct. There is no bar for the learned Magistrate to again grant bail to the accused persons, but the same should be after perusal of the case diary and on the merits of the case.

With the aforesaid observations, CRM 9457 of 2020 is

disposed of.

Pending application, if any, is also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)