

Sl. 5
25.02.2022
Court No.42
SD

CRM 121 of 2021
(Via Video Conference)

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

And

In the matter of: Smt. Rupkatha Dutta (Kundu)

... Appellant.

Mr. Ayan Bhattacharjee

...for the Appellant.

Mr. Prasun Kumar Dutta

Mr. Arijit Ganguly

Md. Kutubuddin

...for the State.

Mr. A.K. Mishra

...for the Opposite Party/Husband.

This is an application under Section 439(2) of the Code of Criminal Procedure filed by the de facto complainant praying for cancellation of bail granted by the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur on November 9, 2020 in G.R. Case No.1618 of 2020 under Sections 498A/406/506/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act.

The order dated November 9, 2020 was passed granting bail to the opposite party no.2 on the ground that he complied with the provision of the notice under Section 41A of the Code of Criminal Procedure and voluntarily surrendered before the trial court.

The said order of bail is sought to be cancelled on two grounds, viz, first the order of bail itself is illegal on the ground that the learned Additional Public Prosecutor was not heard and case diary was not perused by the learned Additional Chief Judicial Magistrate.

Apart from the above two grounds, it is stated by the applicant that after the order of bail the opposite party no.2 has been threatening the old mother of the de facto complainant, the de facto complainant herself and her other relations.

It is submitted by Mr. Ayan Bhattacharya, learned advocate on behalf the informant taking me to the annexures filed with the supplementary affidavit to show that the accused almost regularly is threatening the old mother-in-law and sisters-in-law by sending obnoxious and abusive text and whatsapp messages. The de facto complainant informed those matters by lodging general diary to the local police station but the opposite party no.2 did not mend himself. Not only that he dared to call the advocate on record of the instant proceeding and also threatened him.

The opposite party no.2 has filed an affidavit-in-reply denying all allegations made in the application for cancellation of bail. It is stated by him that he did not send any abusive message to his mother-in-law and other relative from his matrimonial side.

The learned advocate for the opposite party no.2 draws my attention that the mobile number of the opposite party no.2 is 9836111733. The text messages which he send to his mother-in-law was prior to the order of bail granted by the learned Additional Chief Judicial Magistrate on November 9, 2020. It is also pointed out by the learned advocate for the opposite party no.2 that whatsapp messages were send from a mobile number 9330979884. The opposite party no.2 does not possess the abovementioned number from where whatsapp messages were send to the mother of the de facto complainant, husband of his sister-in-law and his sister-in-law.

Mr. Bhattacharya has refuted such submission stating, inter alia, that the opposite party no.2 did not deny to have such mobile number in his

affidavit-in-reply. Now the learned advocate for the opposite party no.2 is making submission which is not on record.

It is not in dispute that the case in which the opposite party no.2 got bail was registered under Sections 498A/406/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act. The case is triable by the learned Magistrate. It is learnt from the submission made by the learned counsel for the parties that charge-sheet has already been submitted in the instant case.

It is not uncommon that when the matrimonial dispute crops up the relation between husband and wife and the said two families becomes inimical and in many cases, the both is used abusive languages to each other. In the instant case, it is established that the opposite party no.2 send abusive messages to his mother-in-law and other matrimonial relations. The conduct of opposite party no.2 is not at all satisfactory. However, in the instant proceeding, the question is whether the opportunity of bail should be cancelled due to such act of the opposite party no.2. The learned advocate for the opposite party no.2 has given an undertaking that henceforth the opposite party no.2 shall block all the numbers of his matrimonial relations and will not make any contact with them. The learned advocate for the opposite party no.2 has also tendered unconditional apology to the act done by the opposite party no.2 after the bail being granted.

It is true that the learned Additional Chief Judicial Magistrate granted bail to the opposite party no.2 without consulting the case diary and even the learned Additional Public Prosecutor was not heard. In *Surender Kumar Antil*, the Hon'ble Supreme Court has deprecated the trend of granting bail by the learned Magistrate without considering the case diary. However, in the instant case, charge-sheet has been submitted against the accused persons.

Considering the nature of the case, this Court does not find any reason of custodial trial. Therefore, I do not find any reason to cancel the order of bail granted to the opposite party no.2. Accordingly, the instant application is rejected on contest.

However, the opposite party no.2 shall file a written undertaking on affidavit in the Court of the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur to the effect that he will not make any contact by phone or by sending text and whatsapp messages with the de facto complainant or any other matrimonial relations in future. Such undertaking shall be filed within seven days from the date of communication of the order to the court below.

Let a copy of this order be sent to the Court of learned Additional Chief Judicial Magistrate, Contai at Purba Medinipur for information and necessary action.

Learned Additional Chief Judicial Magistrate, Contai at Purba Medinipur is directed not to pass any order of bail without consulting the case diary, if he is of the opinion in case of any cognizable and non-bailable offence that immediate bail should be granted, he is at liberty to grant interim bail and thereafter call for case diary and final order of bail shall be passed only after consulting the case diary and giving opportunity to the learned Additional Public Prosecutor of hearing.

The instant application is, thus, disposed of.

(Bibek Chaudhuri, J.)