

14.02.2022

(Through Video Conference)

CRM 807 of 2021

With

CRAN 1 of 2021

In the matter of :

C & E Limited

Vs.

The state of West Bengal & Ors.

For the petitioner:

Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Ayan Bhattacharjee,
Mr. Anand Keshari,
Mr. Arindam Halder.

For the opposite parties:

Mr. Sabyasachi Banerjee,
Mr. Avik Ghatak,
Mr. Anirban Dutta,
Mr. Tanay Agarwal.

For the State:-

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

This is an application for appropriate order by way of modification and/or relaxation of order dated 10th March, 2021 passed by this court in CRM No.807 of 2021 thereby imposing certain conditions upon the applicants, while rejecting the prayer for cancellation of bail preferred by the petitioner in the said proceeding being CRM No.807 of 2021.

Indisputably the applicants are arrayed as accused in CGR Case No.2065 of 2014 arising out Tangra Police Case No.130 of 2014 dated 13th June, 2014. The investigation of the case ended in filing charge-sheet against the applicants under Section 420/406/120B of the Indian Penal Code. Upon filing of such charge-sheet, the learned Additional Chief Judicial Magistrate at

Sealdah took cognizance of offence against the petitioners and issued summons upon the petitioner No.4 and warrant of arrest against the petitioner Nos.1-3. The said order of taking cognizance upon the charge-sheet was challenged by the applicants by filing a criminal revision being CRR No.1705 of 2020 before this court. The said criminal revision was disposed of by a Coordinate Bench vide order dated 9th December, 2020 staying the warrant of arrest issued against the petitioner Nos.1-3 for a period of six weeks from the date of passing order and further directing the petitioners to surrender before the learned Magistrate within a period of four weeks and upon such surrender the learned Magistrate was directed to consider the prayer for bail of the applicants in the background of the fact that the investigation of the case was concluded. Pursuant to such order the petitioners surrendered before the learned A.C.J.M at Sealdah at 29th December, 2020 and they were released on bail upon furnishing a bail bond of Rs.2000/- each with a registered surety of like amount with further consideration to meet the investigating officer and co-operate with the investigation. It is further submitted by the petitioners that subsequent to the order of granting bail the investigating officer of the case made an application praying for further investigation in connection with Tangra P.S Case No.130 of 2014. The learned Magistrate passed an order in the absence of the petitioner on 23rd December, 2020 allowing the prayer of the investigating officer for further investigation. Under such backdrop the defacto complainant had preferred an application for cancellation of bail granted to the applicants challenging the order dated 29th December, 2020 before this court which was registered as CRM No.807 of 2021. By an order dated 10th March, 2021 this court while rejecting the application for cancellation of bail imposed certain conditions, viz-

- i) The accused persons shall file an affidavit before Officer-in-Charge, Tangra P.S as well as before the police station of their residential address mentioning their permanent address, phone number, mobile number and epic card number so that their attendance before the trial court may be ensured.
- ii) They will not tamper any evidence while they are on bail.
- iii) They will not threaten or induce or unduly influence any witness or CGR Case No.2065 of 2014 during trial.
- iv) The accused persons are entitled to leave the country for the purpose of their business and go abroad only after intimating the same to the Officer-in-Charge of the concerned P.S where they permanently reside.
- v) They will also inform the possible date of their return to the concerned police officer.
- vi) They will be personally present on each and every date of trial before the learned Magistrate.

If the petitioners fail to observe and comply with any of the above conditions, the bail granted to them by the learned Additional Chief Judicial Magistrate, Sealdah on 29th December, 2020 shall be cancelled.

It is particularly submitted by the applicants that the condition No.6 imposed by this court while disposing of the application being CRM No.807 of 2021 to the effect that “they will be personally present in each and every date of trial before the learned Magistrate” takes away the statutory right of the applicants laid down in Section 317 and 205 of the Code of Criminal Procedure. For the above reasons the applicants have prayed for modification/

relaxation/ clarification of the order dated 10th March 2021, so far as it relates to condition No.6.

The defacto complainant has filed affidavit-in-opposition to the above mentioned application stating, inter alia, that the applicants/accused persons even after the order dated 10th March, 2021 being passed, never attended the court of the learned A.C.J.M, Sealdah. They also did not file affidavits before the Officer-in-Charge of Tangra Police Station. On the other hand, they sent an e-mail with scanned copy of the affidavits which was directed to be filed before the Officer-in-Charge of the concerned P.S. The Officer in Charge, Tangra P.S has submitted a report to this Court informing the said fact of noncompliance of condition No.1 by the applicants. It is specifically alleged by the informant that the accused persons/applicants did not care to comply with an order dated 10th March, 2021 within a reasonable period of time. Only after a report of the Officer-in-Charge Tangra Police Station was called for by this Court vide order dated 11th August, 2021, they sent e-mail to the said P.S. Thus, the condition No.1 of the order dated 10th March, 2021 was not complied. It is further pleaded by the complainant that the accused persons are not entitled to any relaxation or modification of the order dated 10th March, 2021. On the contrary, the order of bail should be cancelled for noncompliance of the condition imposed vide order dated 10th March, 2021.

Before dealing with the submissions made by the learned Counsels for the parties, this Court feels it pertinent to state that CRM 807 of 2021 was filed by the defacto complainant, a private limited company under Section 439(2) of the Code of Criminal Procedure praying for cancellation of bail granted in favour of the opposite party Nos.2-5 by the learned Additional Chief Judicial Magistrate, Sealdah in connection with Tangra P.S Case

No.130 of 2014 dated 13th June, 2014 corresponding to CGR Case No.2065 of 2014 under Sections 420/406/120B of the Indian Penal Code. The said application under Section 439(2) of the Code of Criminal Procedure was disposed of with the conditions enumerated above.

It is submitted by Mr. Sandipan Ganguly, learned Senior Advocate on behalf of the defacto complainant that the applicant/opposite party Nos.2-5 failed to comply with the direction passed by this Court in point No.1. The accused persons were directed to file affidavits before the Officer-in-Charge of Tangra P.S as well as before the police station of their residential address mentioning their permanent address, phone number, mobile number and epic card number so that their attendance before the trial court may be ensured. Indisputably, the accused persons did not file the affidavit within reasonable period of time. It is further submitted by Mr. Ganguly that in the order dated 10th March, 2021 while disposing of the CRM 807 of 2021, this Court did not explicitly stipulated the time frame for compliance of the conditions but in the absence of said time frame, it is expected that the accused persons would comply with the order within reasonable period of time. As the accused persons failed to comply with the conditions for bail within reasonable period of time, the order of bail should be cancelled because the accused persons have no respect to comply with the court's order. On the other hand, they are absolutely vigilant to enjoy their liberty.

Mr. Sabyasachi Banerjee, learned Advocate for the applicants/accused persons, on the other hand, has refuted the argument advanced by Mr. Ganguly submitting that the accused persons were directed to file affidavit before Tangra P.S where the case against them was instituted as well as in the local P.S where they reside. The accused persons duly complied with the said

order and filed an affidavit at Panchkula P.S on 25th March, 2021. Being wrongly advised they sent the scanned copy of the affidavit by e-mail to the official mail address of the Officer-in-Charge of Tangra P.S.

In reply thereto, Mr. Ganguly submits that police attached to Panchkula P.S visited the residence of the accused persons on 24th March, 2021 and only thereafter they complied with the order of this Court. It is also submitted by him that the instant application for modification/relaxation of the order dated 10th March, 2021 was filed on 9th April, 2021. There is no averment made in the said application that the accused persons complied with the conditions for bail passed by this Court on 10th March, 2021. On 9th July, 2021 petitioners filed an application before the trial court with a prayer to call for a report from the Officer-in-Charge of Tangra P.S as to whether they have complied with the said order passed by this Court on 10th March, 2021. It was ascertained that even in the month of July the accused persons did not file any affidavit as per the direction passed by this Court. Thereafter on 15th July, 2021 the defacto complainant filed an application under Section 439(2) read with Section 482 of the Code of Criminal Procedure being CRM 4794 of 2021 praying for cancellation of bail. Only thereafter the accused persons filed affidavits before Tangra P.S.

In reply thereto, it is submitted by Mr. Banerjee, learned Counsel for the applicants/accused persons that undoubtedly there was delay in filing the affidavits. The accused persons reside in Delhi. It is not possible for them to come over to Kolkata to file affidavits prior to the month of July, 2021. The applicants/accused persons have no intention to disobey the order of this Court. The defacto complainant has not made any allegation to the effect that the accused persons have tempered with the evidence on behalf of the prosecution, or that they threatened or induced or dishonestly influenced any witness for the

prosecution. The accused persons have surely failed to file, the affidavit within reasonable period of time. Therefore, they have filed the application for relaxation/modification of the order.

Mr. Ranabir Roy Chowdhury, learned Advocate for the state, submits that since the accused persons have failed to comply with the direction passed by this court within reasonable period of time, they are not entitled to get any relaxation of the order of bail.

Having heard the learned Counsels for the parties and on perusal of the entire materials on record, this Court is of the view that the instant case, like some other cases is an instance of satisfying the ego of the parties and legal battle, in such situation, takes it back seat.

I am in conformity with the submission made by Mr. Ganguly that the accused persons failed to file affidavit before the Officer-in-Charge of Tangra P.S within reasonable period of time. But for this reason this court does not feel that the majesty of this court and judicial propriety diminishes due to such wrongful act by wrong persons.

It is not in dispute that the accused persons finally filed affidavits before the Officer-in-Charge of Tangra P.S stating the reasons that were to be filed for the purpose of securing attendance of the accused persons before the learned trial court. For delayed compliance of the conditions for bail, the liberty granted under Article 21 of the Constitution of India should not be taken away from the accused persons.

For the reasons recorded above, I am not in a position to accept the submission made by Mr. Ganguly, learned Senior Counsel for the defacto complainant.

At the same time, I like to record that the conduct of the accused persons is not at all satisfactory. They not only failed to comply with the condition of filing the affidavit before the Officer-in-Charge of Tangra P.S within

reasonable period of time but being over cautious they have prayed for modification of the condition No.6 so that they may take recourse of Section 205 and 317 of the Code of Criminal Procedure before and during commencement of trial.

It is needless to say that the court cannot bind any person taking away the relief/reliefs available under the Statute.

Moreover, it is for the trial court to decide an application under Section 205 and 317 of the Code of Criminal Procedure. The applicants/accused persons are not entitled to get a blanket order from this court which may in future be used in the trial court as a direction passed by this court curtailing the power of trial court to decide such application according to the merit and surrounding circumstances of the case.

Thus, the application for modification/relaxation of the order dated 10th March, 2021 is disposed of directing the Officer-in-Charge Tangra P.S to accept the affidavits filed by the accused persons in terms of the order dated 10th March, 2021.

However, at this stage, I am not inclined to modify the condition No.6 at this stage. The trial court is at liberty to deal with such application under Section 205 or 317 of the Code of Criminal Procedure in accordance with law taking into account the entire facts and circumstances of the case in accordance with law.

(Bibek Chaudhuri, J.)