

02.03.2022

Sl. No. 07

Srimanta

Ct.No.42

CRM (SB)/27/2022

(Via Video Conference)

In Re : An application for cancellation of interim bail under Section **439(2)** of the Code of Criminal Procedure, 1973.

In the matter of : **Dayanand Prabhakar.**

...petitioner.

Mr. Bidyut Kumar Halder, Adv.,

Mr. Indranil Halder, Adv.

...for the petitioner.

Mrs. Sujata Das, Adv.

...for the State.

Mr. Subhabrata Chowdhury, Adv.

...for the opposite party no. 2.

This is an application for cancellation of bail filed by the *de facto* complainant of Bishnupur Police Station Case No. 802 (12) 2021 dated 13.12.2021 corresponding to BGR 4907/2021. It is alleged by the *de facto* complainant that by virtue of an agreement for sale the accused person/opposite party no. 2 agreed to sell a piece of land with a structure thereon at a consideration price of Rs.20,50,000/-. It is also alleged that the *de facto* complainant paid a sum of Rs.10,09,000/- to the opposite party no. 2 towards part payment of the consideration price. The *de facto* complainant is always ready and willing to purchase the property but the accused person failed and neglected to execute the sale deed. For this reason, the *de facto* complainant lodged a complaint against the opposite party no. 2 under Sections 406/420 of the Indian Penal Code.

It appears from the record that the opposite party no. 2 was arrested by the Police and taken to Police custody. Subsequently, on the date of production the Learned Magistrate granted bail. Grievance of the petitioner is that out of the said part payment the opposite party no. 2 issued a cheque of Rs.2,50,000/- and the balance amount is still due. The Learned Magistrate without considering the said fact that the balance amount is required to be obtained from the opposite party no. 2, granted bail to him and, therefore, the order of bail should be cancelled.

Learned Advocate for the opposite party no. 2, on the other hand, submits that though in the written complaint it is stated by the *de facto* complainant that he paid a sum of Rs.10,09,000/- as part payment towards consideration money to the opposite party no. 2 in the copy of the application which was served upon him the said amount is written as 8,09,000/-. It is also submitted by the Learned Advocate for the opposite party that at the time of arrest the Investigating Officer did not follow the specific directions of the Hon'ble Supreme Court in the case of **Arnesh Kumar**. Before arrest the accused, he was not served with a notice under Section 41A of the Code of Criminal Procedure. It is also submitted by him that even without serving a notice under Section 41A of the Code the Investigating Officer can arrest an accused but in that case as per the direction contained in paragraph 11.2 of **Arnesh Kumar**, the Investigating Officer is duty bound to submit a checklist in compliance of Section 41(1)(b) of the Code. No checklist was filed in the instant case showing the reason as to why the opposite party no. 2 was arrested. The Learned Advocate for the opposite party no. 2 has also draws my attention to the order impugned where the Learned Magistrate specifically observed that no recovery was made from the possession of the accused.

Learned Public Prosecutor-in-Charge submits in favour of the petitioner.

Having heard the Learned Counsels for the parties and on perusal of the record it appears that after arrest the accused was sent to Police custody on the prayer of the Investigating Officer. During Police custody, no recovery of money could be made by the Investigating Officer. Subsequently, the accused was arrested on 29th January, 2022. The Learned A.C.J.M. passed an order granting bail to the accused. At the time of granting bail the Learned Additional Public Prosecutor was held. He raised no objection against the prayer for bail. The Learned Magistrate granted bail on perusal of the Case Diary and development of investigation while the opposite party was in Police custody.

Therefore, in my considered view the Learned Magistrate did not commit any error in granting bail to the accused. Prayer for cancellation of bail of the opposite party no. 2 is, therefore, **rejected**.

(Bibek Chaudhuri, J.)