

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Bibhas Ranjan De

C.R.M. (NDPS) 191 of 2022

Sk. Miraj
Vs.
The State of West Bengal

For the petitioner : Mr. Soumya Basu Roy Chowdhuri

For the State : Mr. Sanjoy Bardhan
Ms. Baishakhi Chatterjee

Heard on : 18.04.2022

Judgement on : 18.04.2022

Debangsu Basak, J.:

Petitioner prays for default bail.

Learned Advocate appearing for the petitioner submits that the petitioner is entitled for default bail. He relies upon (2021) 2 Supreme Court Cases 485 (*M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence*) in support of his contention. He submits that the petitioner was arrested on February 3, 2021. The petitioner was produced before the learned Magistrate on February 4, 2021. 180 from the date of the arrest expired on July 30, 2021. An application for

extension of time to file the charge-sheet was submitted which was allowed. The extended time expired on September 30, 2021. No charge-sheet was submitted within extended time. Consequently, on October 1, 2021, the right of obtaining default bail approved in favour of the petitioner. The petitioner exercised such right on October 1, 2021 itself. He refers to the order dated October 1, 2021 passed by the learned Judge, Special Court. He submits that the bail petition was initially taken up for hearing by the learned Judge, Special Court. The order records that the learned Counsel for the prosecution sought leave of the Court for one and half hours to ascertain whether the charge-sheet was filed or not. It also records that after an hour the conclusion of hearing of the bail petition, charge-sheet was submitted against the petitioner. He draws the attention of the Court to Paragraph 24 of M. Ravindran (Supra).

Learned Advocate appearing for the State submits that the charge-sheet was submitted on October 1, 2021 itself. The charge-sheet was before the Court prior to the pronouncement of the order granting bail. Therefore, it cannot be said that the right of default bail in favour of the petitioner. In any event, even if such right of default bail accrued in favour of the petitioner, the same stood extinguished immediately on filing the charge-sheet on October 1, 2021 itself.

M. Ravindran (Supra) contemplates various situations one of which is tabulated in Paragraph 24 thereof which is as follows:

“In the present case, admittedly the appellant-accused had exercised his option to obtain bail by filing the application at 10.30 a.m. on the 181st day of his arrest i.e. immediately after the Court opened, on 1-2-2019. It is not in dispute that the Public Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31-1-2019 or prior to 10.30 a.m. on 1-2-2019. The Public Prosecutor participated in the arguments on the bail application till 4.25 p.m. on the day it was filed. It was only thereafter that the additional complaint came to be lodged against the appellant. Therefore, applying the aforementioned principles, the appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order i.e. at 10.30 a.m. on 1-2-2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.”

The facts of the present case are akin to the Paragraph 24 of M. Ravindran (Supra). In the present case, the hearing of the bail petition was taken up on October 1, 2021. The bail petition was filed at 10.30AM in the first day after expiry of the extended period. During the course of hearing, the Public Prosecutor was unable to inform the Court whether the charge-sheet was filed or not. He took time to make that statement to the Court. The Court records that after an hour of

conclusion of hearing of the bail petition, it was informed that the prosecution filed charge-sheet.

Therefore, in the facts of the present case, the bail petition was filed on October 1, 2021 at 10.30AM. The charge-sheet was submitted on October 1, 2021 itself, albeit later than the filing of the bail petition. Therefore, in accordance with Paragraph 24 of M. Ravindran (Supra) the learned Judge ought to have considered the prayer for bail filed prior in point of time taking into consideration that the charge-sheet was not submitted. The learned Judge erred in not doing so.

In our view, right of default bail accrued in favour of the petitioner on October 1, 2021 and that the petitioner exercised such right prior to the charge-sheet being filed. Once the petitioner exercised the right to obtain default bail prior in point of time than the charge-sheet being filed, the default bail was required to be considered and allowed on its merits.

The subsequent filing of the charge-sheet on October 1, 2021 did not extinguish the right to obtain default bail of the petitioner when the application for bail was filed by the petitioner at 10.30AM on October 1, 2021.

In the facts of the present case, therefore, in view of the pronouncement of M. Ravindran (Supra), we are of the view that the petitioner is entitled to default bail as prayed for. Consequently, we grant bail to the petitioner.

Accordingly, the petitioner be released on bail upon furnishing a Bond of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court under the NDPS Act, Howrah, subject to the condition that during bail he shall appear before the learned trial court on the date fixed till disposal of the trial and he shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail being C.R.M. (NDPS) 191 of 2022 is, thus, disposed of.

(Debangsu Basak, J.)

I agree

(Bibhas Ranjan De, J.)

Sunayan Ghosh(Arct)