

25.03.2022
Sl. No. 8
Court No.42
BM

(Via Video Conference)

CRM 1786 of 2021

M/s. Iqra International
Vs.
State of West Bengal & Ors.

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

Mr. Tarique Quasimuddin
Ms. Sanchita Chaudhuri ... for the petitioners

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Soubhik Mitter
Mr. Ankit Dey ... for the opposite party nos.2 & 3

Mr. Sudip Ghosh
Mr. Bitasok Banerjee ... for the State

This is an application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure.

Tiljala Police Station case No.395 dated 31st December, 2020 was registered upon an application under Section 156(3) of the Code of Criminal Procedure against the private opposite parties and Pelletteria Tommasi Lucia, a proprietorship concern and Ms. Lucia Tommasi, proprietor of the above named proprietorship business.

The gist of the case is that on the basis of an agreement between the complainant Md. Hamid Hussain, proprietor of M/s. Iqra International and the accused nos.1 and 2, it was decided that the defacto complainant would deliver leather products to accused nos.1 and 2 and payment would be made in euro currency.

The opposite party nos.2 and 3 acted as commission agents of accused nos.1 and 2.

In course of their business relationship, the opposite party nos.2 and 3 failed to make payment on behalf of accused nos.1 and 2 to the defacto complainant though leather products were supplied to accused nos.1 and 2.

During investigation notice under Section 41(A) was served upon the opposite parties and they met the investigating officer about 11/12 times in compliance of the said notice. Subsequently, on 21st January, 2021 the opposite party nos.2 and 3 surrendered before the learned Additional Chief Judicial Magistrate, Alipore. They were granted ad-interim bail with certain conditions by the learned Additional Chief Judicial Magistrate, Alipore. The said order is sought to be cancelled by the defacto complainant on the following grounds:-

It is contended by Mr. Quasimuddin, learned advocate for the petitioner that though the petitioner claimed themselves to be the commission agents of the accused nos.1 and 2, but they are the persons who represented accused nos.1 proposed payment plan against delivery of goods made certain payments and subsequently failed to make payment against the goods supplied by the defacto complainant. It is also submitted by Mr. Quasimuddin that the learned Magistrate did not even consider as to why the investigating officer prayed for custodial interrogation of the opposite party nos.2 and 3. Therefore, the order of bail was bad in law and the same be cancelled.

Mr. Sandipan Ganguly, learned senior advocate on behalf of the opposite party nos.2 and 3 on the other hand submits that the opposite party nos.2 and 3 are the commission agent. They complied with the notices issued to them under Section 41(A) of the Code of Criminal Procedure and met the investigating officer. They submitted all the documents demanded by the investigating officer. There is no reason for custodial interrogation.

The learned Magistrate duly considered the justifiability of the custodial detention of the opposite parties and considering their previous participation and cooperation in the investigation interim order of bail was granted.

It is further submitted by Mr. Ganguly that the above named opposite parties are commission agents in the transaction and the liability to pay was that of the purchaser. Only because transaction was made between the defacto complainant and the accused nos.1 and 2 through private opposite parties, they cannot be held liable for criminal conspiracy in a case of criminal breach of trust and cheating.

Learned Public Prosecutor-in-Charge, has produced the case diary. It is referred by the learned Public Prosecutor-in-Charge that only on 14th January, 2021 the accused no.2 wrote a letter to the Officer-in-Charge, of Tiljala Police Station stating, inter alia, that the opposite party nos.2 and 3 are the commission agent. She also admitted that her dues to the defacto complainant and promised to pay the said dues. It is further submitted by the learned Public Prosecutor-in-Charge that if the opposite party nos.2 and 3 are

released on bail, the accused nos.1 and 2 cannot be brought to the jurisdiction of the trial court to face trial in a cognizable offence.

Having heard the learned counsel for the parties and on careful perusal of the case diary specially page 88 of the case diary, this court finds that the investigating officer made a prayer for custodial interrogation of the opposite party nos.2 and 3 on 21st January, 2021. In the said prayer it was stated by the investigating officer:

“ Accordingly, further notices under Section 41(A) of the Code of Criminal Procedure were served upon m-noted accused persons sl. Nos.3 and 4 with a request to submit the statement of commission payment to them by the accused person sl. No.2 but till date they did not turn up before the investigation agency.

this day m-noted accused person sl. Nos.3 and 4 are being surrendered before your Honour's court. They are needed to be examined more in the light of instant case. But they are avoiding the same. Hence, custodial investigation of the m-noted accused persons sl. Nos.3 and 4 are required to unearth the actual fact.”

On perusal of the impugned order dated 21st January, 2021, it is found that opposite party no.2 was directed to meet the investigating officer of the case thrice a week for next one month and the opposite party no.3 was directed to meet the investigating officer if and when called for.

During hearing the learned senior counsel for the opposite party no.2 has produced a dairy showing that he meet the

investigating officer regularly in compliance of the order dated 21st January, 2021.

The investigating officer wanted custodial detention only to get the documents relating to payment of commission to the opposite parties by accused no.2.

Considering the impugned order and the case diary and other materials on record, I do not find any reason for cancellation of bail granted to the opposite party nos.2 and 3. However, they are specifically directed to hand over the documents relating to payment and receipt of commission from accused nos.1 and 2 to the investigating officer within seven days from the date of order with a supporting affidavit sworn by them.

The instant miscellaneous application is thus disposed of.

(Bibek Chaudhuri, J.)