

27.04.2022
Item No.03.
Suman/Srimanta
Ct.42

CRM (SB) 48 of 2022

In Re: An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure in connection with Bhowanipur Police Station Case No.226 dated 12.10.2021 under Sections 498A/406/34 of the Indian Penal Code and under Sections 3 / 4 of the Dowry Prohibition Act.

And

In the matter of: **Ritu Jhunjhunwala**
Vs.
The State of West Bengal & Ors.

Mr. Sourav Chatterjee
Mr. Avik Ghatak
Mr. Soumya Nag
Mr. Abhinav Rakshit
...for the petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Somopriyo Chowdhury
Mr. Sanket Sarangi
Mr. Arka Banerjee
...for the private respondents

Mr. Ranabir Roychowdhury
Mr. Mainak Gupta
...for the State

The petitioner being the de facto complainant of Bhowanipur Police Station Case No.226 dated 12th October, 2021 is the applicant before this Court praying for cancellation of interim bail granted to the private opposite parties by the learned Chief Judicial Magistrate at Alipore vide order dated 14th March, 2022.

It is submitted by Mr. Sourav Chatterjee, learned counsel on behalf of the petitioner that on the basis of a complaint filed by the petitioner before the Officer-in-charge of the jurisdictional police station, a case under Section 498A/406/34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act was registered against her husband and parents-in-law. During investigation of the case the Investigating Officer sent a notice under Section 41A of the Code of Criminal Procedure requiring the accused persons to appear before him for interrogation. They have not complied with the directions contained in the said notice. Non-compliance of the notice under Section 41A of the Code of Criminal Procedure, led the Investigating Officer to submit a prayer before the Chief Judicial Magistrate at Alipore for arresting the private opposite parties and taking them to police custody. Incidentally on 14th March, 2022 the accused persons filed a put up petition before the Chief Judicial Magistrate with a prayer to allow them to surrender and further prayed for bail. The learned Chief Judicial Magistrate granted interim bail to the private opposite parties in spite of objection raised by the learned Public Prosecutor.

The learned Chief Judicial Magistrate held that the notice under Section 41A of the Code of Criminal Procedure was served upon the accused persons way beyond the time stipulated by the Hon'ble Supreme Court in ***Arnesh Kumar versus State of Bihar***. Non-compliance of the direction of the Hon'ble Supreme Court with regard to the applicability of Section 41A of the Code of Criminal Procedure led the learned Magistrate to hold that custodial detention of the accused persons was not necessary because had there been any cogent reason for custodial interrogation, police ought to have taken resort

to Section 41A at the earliest point of time after initiation of investigation.

According to Mr. Chatterjee, any negligence on the part of the police officer in the process of investigation cannot be held to be a ground for granting bail to the accused persons.

It is further submitted by Mr. Chatterjee that the learned Magistrate failed to appreciate the ratio laid down by the Delhi High Court in ***Poran Singh versus State of Delhi*** vide order dated 10th December, 2021 for bail application No.2029 of 2018. The general proposition that the provision of bail cannot be used as a measure or tool to recover 'stridhan' property is accepted by Mr. Chatterjee. But the learned counsel attempts to delineate a line of difference between the general proposition or ratio and the facts and circumstances of this case. It is submitted by Mr. Chatterjee that the de facto complainant has lodged F.I.R. against the accused persons alleging commission of offence under Sections 498A/406 of the Indian Penal Code along with other penal provisions. Section 406 of the Indian Penal Code deals with misappropriation of property. In the instant case it is the allegation of the de facto complainant that huge quantity valuable ornaments and other 'stridhan' properties are illegally kept under the possession of the accused persons and thereby they have misappropriated 'stridhan' properties of the de facto complainant. It is the bounden duty of the Investigating Officer to conduct investigation and ascertain as to whether the allegation made by the de facto complainant is true or baseless. The learned Magistrate, however, by granting interim bail did not give the Investigating Officer proper opportunity to conduct search and seizure to recover 'stridhan' properties of the de facto complainant.

Therefore, according to Mr. Chatterjee, the learned Magistrate failed to appreciate the ratio laid down by the superior Courts on this subject in proper perspective and granted bail considering the fact that if the bail is refused, valuable constitutional and fundamental rights of the accused persons will be at peril. While considering the application for bail, the learned Magistrate did not consider specific allegation made by the de facto complainant in her complaint.

Mr. Sandipan Ganguly, learned senior advocate on behalf of the private opposite parties submits producing a copy of the G.D. entry recorded by the Officer-in-charge, Parnasri Police Station on the basis of information submitted by the opposite party No.1-husband of the de facto complainant that the petitioner left her matrimonial home on 13th September 2021 with her mother, sister and brother-in-law and at the time of departure she took away all her clothes, jewellery, bags and personal items from her matrimonial home. It is submitted by Mr. Ganguly that the police case was registered on 12th October, 2021. The above-mentioned G.D. entry was recorded on 28th October, 2021. The accused persons surrendered before the Court of the learned Chief Judicial Magistrate at Alipore on 14th March, 2022. During this long period the Investigating Officer did not find any time to investigate the case in order to find out and collect evidence in support of the charge under Section 406 of the Indian Penal Code. In other words, the Investigating Officer could have held investigation to ascertain as to whether 'stridhan' properties are kept in the matrimonial house of the *de facto* complainant or not during the period between registration of the case and the date when the accused persons were permitted to surrender before the Court of the Learned Magistrate.

It is further submitted by Mr. Ganguly that the Investigating Officer never prayed for police custody prior to 14th March, 2022, i.e., on the date of surrender. The grounds for police custody were two fold. The accused persons did not comply with the notice under Section 41A of the Code of Criminal Procedure and secondly, 'stridhan' articles were required to be recovered/seized. In support of his argument, reference is made by Mr. Ganguly of a decision by the Hon'ble Supreme Court in ***Devender Kumar & Anr. -Vs.- State of Haryana & Ors.*** reported in ***(2010) 6 SCC 753*** wherein it is held by the Hon'ble Supreme Court that an order of bail cannot be cancelled directing the arrest of the accused persons on the ground that disclosures have been made by the appellants and that their police custody was necessary for recovery of some articles. In other words, prayer for bail cannot be refused on the ground that custodial detention of the accused persons may be helpful to recover some articles involved in the case. Referring to a decision of the Hon'ble Supreme Court in ***Satyajit Ballubhai Desai & Ors. -Vs.- State of Gujarat*** reported in ***(2014) 14 SCC 434***, it is submitted by Mr. Ganguly that for grant of police remand, Investigating Agency must advance strong reasons and satisfy the Magistrate that without police custody it would be impossible to undertake further investigation. According to Mr. Ganguly, no such case was made out by the Investigating Officer in his prayer for police custody. The Learned Senior Counsel has also referred to a Three-Judges Bench decision of the Hon'ble Supreme Court in ***Social Action Forum for Manav Adhikar & Anr. -Vs.- Union of India, Ministry of Law and Justice & Ors*** reported in ***(2018) 10 SCC 443***. In paragraph 39 of the said report it is observed by the Hon'ble Supreme Court that when an application for bail is

entertained, proper conditions have to be imposed but recovery of disputed dowry items may not by itself a ground while rejecting an application for grant of bail under Section 498A of the Indian Penal Code.

It can be gathered from the submission made by the Learned Counsel for the petitioner that the petitioner is really worried for recovery of 'stridhan' articles. It is true that the Investigating Officer has not taken any positive step as yet for recovery of 'stridhan' articles, if any. Mr. Ranabir Roy Chowdhury, Learned Public Prosecutor-in-Charge has produce the case diary. On perusal of the case diary it is ascertained that the notice under Section 41A was sent to the accused persons by email. It cannot be ascertained without considering the delivery report of mail that the notice was actually served upon the accused persons. In order to the said fact even *prima facie* electronic evidence is absolutely necessary. However, this is not the stage to discuss in detail as to whether notice under Section 41A was served or not. Acceptance of notice under Section 41A of the Code of Criminal Procedure and appearance of the accused persons before the Investigating Officer is not the solitary ground where the Learned Magistrate will grant bail mechanically. If the conditions enumerated in **Arnesh Kumar Case** is fulfilled even after compliance of notice under Section 41A, bail can be refused.

However, in the instant case this Court is not called upon to discuss and decide such issue.

I have already recorded that the *de facto* complainant is worried to get back her 'stridhan' properties at a time when matrimonial discord compelled her to file a complaint before the police under Sections 498A/406 of the Indian Penal Code. On perusal of the order passed by the Learned Chief Judicial Magistrate,

South 24-Parganas at Alipore it is found that the Learned Magistrate granted interim bail to the accused persons on condition that the accused persons shall cooperate with the Investigating Officer and if the Investigating Officer makes any attempt to recover the 'stridhan' articles, the accused persons shall not cause any obstruction.

In view of such condition imposed by the Learned Magistrate on the accused persons I do not find any reason to cancel interim bail granted to the accused persons.

However, the instant application is **disposed of** with the following directions:-

That the accused persons shall meet the Investigating Officer within seven days from the date of this order at Police Station and they shall cooperate with the Investigating Officer in search of all possible places and seizure of 'stridhan' properties, if any. The Investigating Officer will also notify the date of search and seizure to the *de facto* complainant and the *de facto* complainant shall help the Investigating Officer in course of search and seizure. The accused persons shall not cause any obstruction to the *de facto* complainant and the Investigating Officer in conducting search and seizure in order to collect evidence in support of the allegation under Section 406 of the Indian Penal Code.

(Bibek Chaudhuri, J.)

