

08.04.2022

Sl. No. 04

Srimanta

Ct.No.42

CRM(SB)/49/2022

(Via Video Conference)

In re : An application for cancellation of bail under Section **439(2)** of the Code of Criminal Procedure, 1973 in connection with **Barasat** Police Station Case No. **452** of **2021** dated **26.07.2021** under Sections **420** of the Indian Penal Code, 1860.

-And-

In the matter of : **Shibtosh Roy @ Sibtosch Roy**

...petitioner.

Mr. Shibaji Kumar Das, Adv.,

Ms. Rupsa Sreemani, Adv.

...for the petitioner.

Mr. Arijit Ganguly, Adv.,

Mr. Sandip Chakraborty, Adv.

...for the State.

This is an application for cancellation of bail which was confirmed by the Learned Chief Judicial Magistrate, North 24-Parganas vide order dated 8th February, 2022.

I have heard the Learned Advocates for the petitioner and the State respondents. The private opposite party, though received the notice of the instant proceeding has not appeared before this Court to contest the instant application.

Suffice it to say that vide order dated 19th August, 2021 the Learned Chief Judicial Magistrate-in-Charge granted interim bail to accused Kartick Chandra Sarkar who surrendered before the Court of the Learned Magistrate without perusing Case Diary and also without considering the 'serious objection' raised by the Learned Additional Public Prosecutor. Previously, the said order was challenged by the

petitioner in CRM No. 5740/2021 and this Court passed an order dated 25th January, 2022 directing the Learned Magistrate to consider the Case Diary at the time of hearing of the bail application and pass necessary order in accordance with law keeping in view the ratio laid down in **Satender Kumar Antil** by the Hon'ble Supreme Court. However, it is found from the certified copy of the orders passed by the Learned Chief Judicial Magistrate, North 24-Parganas that on 8th November, 2021 he passed an one line order confirming the interim bail of the private opposite party. The said order runs thus:-

"Petition filed by AI Bail confirmation.

Considered.

AI Bail is confirmed".

I feel ashamed in dictating the order and observing in open Court that a Judicial Officer in the rank of Chief Judicial Magistrate does not know even to write a correct sentence in the order. I fail to understand the meaning of the sentence 'petition filed by AI Bail confirmation'. The Learned Chief Judicial Magistrate, North 24-Parganas put his signature under the order. It presumably appears that the order was written by some other person, may be Bench Clerk or Bench Clerk – II or the G.R.O. and the Learned Chief Judicial Magistrate without even perusing the sentences what was written in the order filled up the vacant portion with the word 'confirmed' and put his signature. He did not consider the Case Diary. He is not aware of the directions made in series of cases by the Hon'ble Supreme Court.

Such act of the Learned Chief Judicial Magistrate is deprecated. This Court proposes to record its observation in the service book of the Learned Chief Judicial Magistrate at Barasat. However, the Learned Chief Judicial Magistrate, Barasat is given an opportunity to submit his explanation

before this Court within seven days after communication of this order to him.

It appears from the order dated 8th November, 2021 that the application for confirmation of interim bail was not disposed of taking into consideration the materials in the Case Diary. Therefore, the order dated 8th November, 2021 is cancelled.

The Learned Chief Judicial Magistrate is directed to hear afresh the application for confirmation of bail of the accused in accordance with law and dispose of the same after considering the Case Diary, the gravity of offence and submission made by the Learned Additional Public Prosecutor in respect of the prayer for confirmation of bail of the accused.

The *de facto* complainant is also permitted to join the hearing of the application for confirmation of interim bail of the accused and permitted to make his objection which shall be considered by the Learned Chief Judicial Magistrate, North 24-Parganas.

A copy of this order be sent to the Learned Chief Judicial Magistrate, North 24-Parganas at Barasat forthwith through the Learned Sessions Judge, North 24-Parganas for information and compliance.

(Bibek Chaudhuri, J.)