

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 No. 2603 of 2021

With

IA No.: CRAN 1 of 2021, CRAN 2 of 2021

Ravneet Kaur @ Ravneet Kaur Bhatia

Vs.

The State of West Bengal

For the Petitioner : Mr. Sandipan Ganguly, Adv.
Mr. Dipanjan Dutta
Mr. Vishwarup Acharyya

For the State : Mr. Saswata Gopal Mukherji, Ld. PP
Mr. S. S. Imam
Mr. Subrato Roy

For the Opposite : Mr. Sekhar Basu, Sr. Adv.
Parties Nos. 2 to 4 Mr. Sabyasachi Banerjee
Mr. Daanish Haque
Mr. Emon Bhattacharya

Heard on : March 01, 2022

Judgement on : March 10, 2022

DEBANGSU BASAK, J.:-

1. The petitioner has assailed the orders dated September 28, 2020, November 18, 2020 and February 11, 2021 passed by the Learned Chief Judicial Magistrate, South 24-Parganas at Alipore in C.G.R. Case No. 2156 of 2020 arising out of Karaya Police Station Case No 237 of 2020 dated June 22, 2020 under Sections 498A/354C/384/406/467/468/471/34 of the Indian Penal Code, 1860 in this application. By such orders the learned Chief Judicial Magistrate had granted bail to the private opposite parties. The petitioner has sought cancellation of the bail so granted.

2. Learned Advocate appearing for the petitioner has submitted that, the petitioner, is the wife of the opposite party no. 2. She had lodged a police complaint against the opposite parties nos. 2 to 4 with the Karaya Police Station which was registered as a first Information Report and a police case started. The opposite parties nos. 2 to 4 had been granted bail by the learned Chief Judicial Magistrate on different dates. He has referred to the orders granting bail to the opposite parties nos. 2, 3 and 4. He has submitted that the opposite parties nos. 3 and 4 who are the in-laws of the petitioner surrendered before the Chief

Judicial Magistrate on September 28, 2020. Learned Chief Judicial Magistrate had granted interim bail to the opposite parties nos. 3 and 4. The interim bail had been directed to remain in force till November 18, 2020. On November 18, 2020, the opposite party nos. 3 and 4 had applied for confirmation of the interim bail upon which the learned Chief Judicial Magistrate confirmed the order of bail. Thereafter, the opposite party no. 2 had surrendered before the Chief Judicial Magistrate on February 11, 2021 and applied for bail. Such prayer for bail had been opposed on behalf of the State. The learned Chief Judicial Magistrate had proceeded to grant bail to the opposite party no. 2 on the ground that two other co-accused persons were already enlarged on bail after surrendering before the Court.

3. Referring to **2002 Volume 3 Supreme Court Cases 598 (Ram Govind Upadhyay Vs. Sudarshan Singh And Others)** learned Advocate appearing for the petitioner has submitted that, there is a difference in consideration of the parameters for cancelation of a bail and a challenge to a perverse order granting bail. He has submitted that, all the three impugned orders are perverse. The learned Chief Judicial Magistrate has failed to take into consideration the parameters for granting bail. The learned

Chief Judicial Magistrate has failed to take into consideration the gravity of the offence and the involvement of the opposite party no. 2 therein. He has contended that, there are allegations of forgery. In fact, the opposite party no. 2 has two different driving licenses and two permanent account numbers with the Income-Tax Authorities. The complaint with the police has serious allegations with regard to forgery against at least the opposite party no 2. He has relied upon **2009 Volume 14 Supreme Court Case 638 (Subodh Kumar Yadav vs. State of Bihar and Another)** for the proposition that the learned Chief Judicial Magistrate acted with undue haste in granting bail on the date of the surrender. He has relied upon **2016 Volume 3 Calcutta Criminal Law Reporter (Cal) 606 (In Re: Sant Lal Gupta @ Sant Lal Ram Shaw)** and **2018 SCC Online Delhi 12306 (Court on its Own Motion Vs. State)** in support of his contentions that when the order of the learned Magistrate is without jurisdiction, the same is required to be interfered with.

4. Learned Advocate appearing for the petitioner has relied upon **2022 SCC online SC 30 (Manoj Kumar Khokhar vs. State of Rajasthan and Another)** and submitted that, an order granting bail should be informed with reasons. None of the orders

assailed in the present application has any cogent reason for the purpose of granting bail to any of the private parties.

5. Learned Public Prosecutor appearing for the State has submitted that, custodial interrogation of the opposite party no. 2 is imperative. He has referred to the application of the police filed before the learned Chief Judicial Magistrate in respect of the opposite party no. 2 where the police had prayed for custody of the opposite party no. 2. He has submitted that, the de facto complainant had alleged that the opposite party no. 2 obtained documents like permanent account number from the Income-Tax Authorities and driving license on the basis of false and fabricated documents impersonating himself as "Harsh Singh" and used those documents for illegal gains. He has also drawn the attention of the Court to the fact that the de facto complainant had alleged that the opposite party no. 2 had set a video camera camouflaged in the electric socket in her bedroom thereby infringing her privacy.

6. Learned Public Prosecutor has referred to the case diary and submitted that police had seized the application for allotment of permanent account number in respect of Income-Tax made by Harsh Singh. In such application a driving license of Harsh Singh

had been enclosed as proof of address and proof of identity. He has submitted that a permanent account number PAN had been allotted in favour of Harsh Singh on the basis of such application. He has also drawn the attention of the Court to the driving license standing in the name of Harsh Singh.

7. Learned Public Prosecutor has submitted that on obtaining such documents, the police had sought report on the handwriting of such documents from the Questioned Documents Examination Bureau. The documents had also been sent for examination to the Central Forensic Science Laboratory. The Central Forensic Science Laboratory by a writing dated November 10, 2021 had opined that the photographs on the application for allotment of PAN of Harsh Singh and the application for opening a bank account with Kotak Mahindra Bank and the application for opening a Savings Bank Account with Axis Bank were of the same person. He has submitted that, the Questioned Document Examination Bureau by a writing dated August 27, 2021 had opined that the specimen signature obtained from the opposite party no. 2 and the writing on the application of Harsh Singh were by the same person.

8. Learned Public Prosecutor has submitted that, there are overwhelming evidence gathered by the police on investigation to establish that the opposite party no. 2 had two permanent account numbers with the Income-Tax Authorities and that he has used both permanent account numbers for the purpose of opening bank accounts. The opposite party no. 2 had impersonated himself as Harsh Singh and has opened bank account with Axis Bank and Kotak Mahindra Bank. Employees of Kotak Mahindra Bank and Axis Bank had stated that Harsh Singh and the opposite party no. 2 are one and the same person. He has submitted that, custodial interrogation of the opposite party no. 2 is imperative to unearth the quantum of forgery that the opposite party no. 2 had indulged in by using two permanent account numbers with the Income-Tax Authorities.

9. Learned Public Prosecutor has submitted that, the order of bail of the opposite party no.2 has affected the investigation. He has submitted that, the Chief Judicial Magistrate did not take into account the parameters for consideration of grant of bail while granting bail to the opposite party no. 2. The Chief Judicial Magistrate has glossed the gravity of the offence and the involvement of the private party no. 2 therein. The Chief Judicial

Magistrate has also failed to take into account the fact that custodial interrogation of the opposite party no. 2 is imperative given the quantum of forgery that the opposite party no. 2 has indulged in.

10. Learned Public Prosecutor has relied upon **1997 Volume 7 Supreme Court Cases 187 (State vs. Anil Sharma)** in support of his contention that custodial interrogation is quantitatively more result oriented than questioning a suspect who is well ensconced with a favourable order of bail. Effective interrogation of a suspected person is advantageous as many useful informations and materials can be garnered which would otherwise be suppressed by a person favoured with an order of bail.

11. Learned Public Prosecutor has relied upon **2021 Volume 6 Supreme Court Cases 191 (Naveen Singh vs. State of Uttar Pradesh and Another)** and submitted that, the allegation of forgery are there in the First Information Report. Considering the fact that the de facto complainant had levelled serious allegations against the opposite party no. 2, the learned Chief Judicial Magistrate ought not to have released the opposite party no. 2 on

bail on the date of his surrender particularly when, the police wanted custody of the opposite party no. 2 for interrogation.

12. Learned Public Prosecutor has relied on **2012 Volume 12 Supreme Court Cases 180 (Kanwar Singh Meena vs. State of Rajasthan and Another)** for the principles applicable for grant of bail and for cancellation of bail. He has submitted that, in the facts of the present case the Court should cancel the bail granted in favour of the opposite party no. 2 and allow the police to make custodial interrogation of the opposite party no. 2.

13. Opposing the prayer for cancellation of the bail, the Learned Senior Advocate appearing for the private opposite parties has submitted that, the application for cancellation of bail had been filed 233 days from the date of the order granting the bail. All the private opposite parties have complied with the conditions granting the bail. Bail to the private opposite parties had been granted in three tranches. The opposite party nos. 3 and 4 were granted interim bail on September 28, 2020. Such interim bail had been confirmed on November 18, 2020. Thereafter, the opposite party no. 2 had surrendered before the Chief Judicial Magistrate and was granted bail on February 11, 2021.

14. Learned Senior Advocate appearing for the private opposite parties has submitted that, permanent account number is allotted only after obtaining the biometrics of the person concerned. Therefore, the question of the opposite party no. 2 impersonating himself as “Harsh Singh” and obtaining a Permanent Account Number as Harsh Singh does not arise particularly when there is a PAN in his name.

15. Learned Senior Advocate appearing for the private opposite parties has drawn the attention of the Court to the First Information Report. He has submitted that, the First Information Report does not contain any materials with regard to impersonation in the manner as presently alleged by the State against the opposite party no. 2.

16. Learned Senior Advocate appearing for the private parties has highlighted the conduct of the private opposite parties subsequent to the orders granting bail to them. He has submitted that, the opposite party no. 2 had met the investigating officer even after the grant of bail on numerous occasions. In fact, the opposite party no. 2 had met the investigating officer on ten occasions subsequent to the order of bail dated February 11, 2021. All the private opposite parties are ready and willing to

meet to the investigating officer if so directed by the Court, in such frequency and in such manner as the Court may deem it appropriate to direct.

17. Learned Senior Advocate appearing for the private opposite parties has relied upon **2018 Volume 16 Supreme Court Cases 511 (x vs. State of Telengana and Others)** and submitted that in the facts of the present case, cancellation of bail is not warranted. He has contended that, once bail is granted, it should not be cancelled unless a cogent case based on supervening event is made out. In the same vein, he has relied upon **2020 Volume 11 Supreme Court Cases 648 (Prabhakar Tewary vs. State of Uttar Pradesh and Another)**.

18. The petitioner herein had lodged a complaint with the police on June 22, 2020 against the private opposite parties with regard to the torture meted out to her by the private opposite parties since her marriage. In such complaint the petitioner had alleged that the private opposite parties did not refund money taken from her. The petitioner had also alleged that the private opposite party no. 2 obtained Government documents like permanent account numbers and driving license on the basis of false and fabricated documents impersonating himself as Harsh Singh and

has been using such documents as genuine. The petitioner had claimed that camera had been installed in her bedroom camouflaged in light equipments infringing upon her privacy.

19. On the basis of such complaint, a police case being Karaya Police Station Case No. 237 dated June 22, 2020 under Section 498A/354C/384/406/467/468/471/34 of the Indian Penal Code had been registered against the private opposite parties. The police had commenced investigations thereon.

20. In course of investigations, the police could not find the hidden camera claimed to have been camouflaged inside the bedroom of the petitioner. The police, however, had found two bank accounts of Axis Bank BBD Bagh Branch and Kotak Mahindra Bank, Park Street Branch in the name of Harsh Singh. Bank account opening forms had been seized under the seizure list. One bank account opening form of the opposite party no. 2 in respect of Kotak Mahindra Bank, Ballygange Branch had also been seized.

21. The police had also seized the original PAN Card application form in the name of Harsh Singh from the Regional Manager UTI Infrastructure Technology and Services, Kolkata. The police had collected the handwriting of the private opposite party no. 2. The

police had sent the original bank account opening forms and the PAN Card application form bearing the signature of Harsh Singh along with his subsequent signature of the opposite party no. 2 to the Questioned Document Examination Bureau for examination of the handwriting to ascertain whether the handwriting of Harsh Singh and the opposite party no. 2 matched or not. The Questioned Document Examination Bureau had opined that the same person had executed the handwriting of Harsh Singh and of the opposite party no. 2. Consequently, the police has claimed that, there are materials to establish that the opposite party no. 2 impersonated himself as Harsh Singh in opening the bank accounts and obtaining the permanent account number with the Income-Tax Authorities as Harsh Singh. The police has also come across the permanent account number standing in the name of the opposite party no. 2.

22. In the course of investigations, the police has come across materials to suggest that, there was a nexus between the address given by the opposite party no. 2 while impersonating himself as Harsh Singh with the addresses occupied by the opposite party no. 3 at given points of time.

23. In the course of investigations, the police had also learned that the private opposite parties from time to time extorted a sum of Rs. 10 Lakhs from the petitioner. The police had seized the stridhan articles and subsequently handed over the same to the petitioner on her bond.

24. In the course of investigations, the opposite party nos. 3 and 4 had surrendered before the Chief Judicial Magistrate on September 28, 2020 when the Chief Judicial Magistrate on the finding that the opposite party nos. 3 and 4 were not the primary accused and after coming to a finding that the detention of opposite party nos. 3 and 4 was not needed for the purpose of investigation and after returning a finding that there was no allegation of forgery against the opposite party nos. 3 and 4 granted interim bail to the opposite party nos. 3 and 4. The interim bail had been directed to remain in force till November 18, 2020.

25. On November 18, 2020, the opposite party nos. 3 and 4 had filed an application before the learned Chief Judicial Magistrate praying for confirmation of the interim bail. The learned Chief Judicial Magistrate after considering that no adverse report had been placed against the opposite party nos. 3 and 4 and that the

opposite party nos. 3 and 4 had complied with the conditions of the bail confirmed the interim bail in favour of the opposite party nos. 3 and 4.

26. The opposite party no. 2 had surrendered before the Chief Judicial Magistrate on February 11, 2021. The opposite party no. 2 had also applied under Section 437 of the Criminal Procedure Code. Before the learned Chief Judicial Magistrate, the opposite party no. 2 had contended that, he was not served with a notice under Section 41A of the Code of Criminal Procedure Code. The learned advocate for the State had raised objections to the prayer for bail. The investigating officer had prayed for a detention of the opposite party no. 2, inter alia, on the ground of requirement to investigate the allegation of forgery and impersonation regarding the permanent account numbers and the driving licenses of the opposite party no. 2 and his impersonation as Harsh Singh. The Chief Judicial Magistrate had also heard the advocate for the petitioner on February, 2021.

27. By the order dated February 11, 2021, the learned Chief Judicial Magistrate had found that co-accused persons were already on bail after surrendering. He had also recorded that the police case was registered on June 22, 2020 and that a period of

eight months had elapsed with nothing being there in the case diary to show that the investigating officer had tried to apprehend the opposite party no. 2 for the purpose of the investigation. The learned Chief Judicial Magistrate had observed that, the case was document based and coupled with the allegation of matrimonial dispute and all documents in connection with the case being seized by the investigating officer, and found no justification for detention of the opposite party no. 2 for the sake of investigation and custodial interrogation. Consequently, the Chief Judicial Magistrate had allowed the prayer for bail of the opposite party no. 2 made under Section 437 of the Criminal Procedure Code.

28. In ***Subodh Kumar Yadav (supra)***, the Supreme Court has observed that, bail once granted can be cancelled based on conduct subsequent to the release on bail and supervening circumstances. In given facts, if the superior Court finds that the Court granting bail had proceeded on irrelevant material, or if there was non-application of mind or the Court failed to take note of any statutory bar to grant bail or there was manifest impropriety while granting the order of bail, the same can be cancelled. Bail can also be cancelled if the same had been granted while taking into consideration irrelevant materials.

29. The Division Bench of this Hon'ble Court in ***In Re: Sant Lal Gupta (supra)*** has considered Section 437 of the Criminal Procedure Code. It has observed that when considering an application for bail under Section 437 of the Criminal Procedure Code, where one of the alleged offences involved is found to be punishable either with death or imprisonment of life, the power of the Magistrate to grant bail under Section 437 of the Criminal Procedure Code stands completely negated, unless the opinion of the Magistrate is to the contrary. In the facts of that case, there was an allegation of forgery of a document which such document was in the custody of the police. Moreover, the investigation was over and charge sheet had been submitted. Furthermore, the State did not express any apprehension that the accused if remaining on bail, was likely to abscond. In such factual background, the bail granted had not been cancelled by the Court.

30. The Delhi High Court in ***Court on its Own Motion (supra)*** has considered Section 437 of the Criminal Procedure Code. It has observed that, in a case where the accused named in the First Information Report for commission of an offence which prescribe a sentence of death or imprisonment of life as

punishment and there appears reasonable ground for the accused being guilty of such an offence the Court shall not consider releasing the accused on bail under Section 437 (1) unless one or more of the grounds stated in the first two proviso of the Section 437(1) of the Cr.P.C had been made out.

31. In ***Ram Govind Upadhyay (supra)***, the Supreme Court has observed that, considerations for the grant of bail and considerations for cancellations of an order of bail are independent and do not overlap each other. In the event, the High Court finds that the order for bail was granted without taking into consideration the relevant facts, the bail granted can be cancelled.

32. ***Kanwar Singh Meena (supra)*** has dwelt on the principles as applicable for grant of bail and principles applicable for cancellation of bail. It has observed as follows:-

“10.While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima

facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

33. In **Naveen Singh (supra)**, the Supreme Court has observed the seriousness of the offenses was one of the relevant conditions while considering grant of bail. Merely because the police had filed charge sheet, does not entitle the accused to an order for bail.

34. In **X (supra)**, the Supreme Court has observed that there is a distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. It has held that very cogent and overwhelming

circumstances are necessary for an order directing cancellation of bail already granted.

35. In ***Prabhakar Tewary (supra)*** the Supreme Court has observed that two key factors in setting aside an order granting bail are non-application of mind on the part of the Court granting the bail or the opinion of the Court in granting bail is not drawn out from the prima facie view of the evidence on record.

36. In ***Anil Sharma (supra)*** the Supreme Court has observed that, custodial interrogation is qualitatively more effective than questioning a suspect protected with a bail order. Custodial interrogation has a greater chance of success. The Court has to presume that, the police will conduct such interrogation responsibly.

37. In ***Manoj Kumar Khokhar (supra)***, the Supreme Court has dealt with the aspect of adequate reasons being made available for judicial or a quasi-judicial order. It has observed as follows :-

“19. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates Private Limited v. Masood Ahmed Khan, (2010) 9 SCC 496, wherein after referring to a number of judgments this

Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

“(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37])

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

38. Three orders of the learned Chief Judicial Magistrate have been assailed in the present petition by the petitioner. By the three orders that have been assailed, the first of the two have initially granted interim bail to the private opposite parties nos. 3

and 4. The second order has confirmed the interim bail granted in favour of the opposite parties nos. 3 and 4 by the first order.

39. In adversarial proceedings, when the decision of the Adjudicating Authority impacts the rights of any of the parties to the proceedings or even when a third party rights stand affected, the Adjudicating Authority is obliged to ascribe reasons for the decision taken. The Adjudicating Authority has an obligation to state the reasons for which the decision has been arrived at. Reasons have been considered as the 'heart beat' of the decision of the Adjudicating Authority. Absence of reasons in the decision of the Adjudicating Authority renders the decision susceptible to challenge. Presence of reasons, ipso facto does not render the decision infallible. The decision along with the reasons for arrival at the decision can still be scrutinize, if the law governing the decision making process permits, on the ground of adequacy thereof.

40. In the facts of the present case, all the orders of the learned Chief Judicial Magistrate as has been assailed herein contains reasons for the decision to grant bail to the private opposite parties. Whether or not the reasons as has been ascribed by learned Chief Judicial Magistrate in his orders withstand the

scrutiny of challenge under Section 439(2) of the Criminal Procedure Code is a different issue altogether.

41. As has been observed in the various authorities cited at the bar on the parameters of Section 439(2), there has to be cogent and overwhelming circumstances for the order of bail to be cancelled. The Court has to consider factors such as the possibility of the tampering with the evidence by the accused or the accused interfering or attempting to interfere with the course of justice or the possibility of the accused evading the course of justice. Under Section 439(2) of the Criminal Procedure Code, the Court can set aside an order granting bail, if such order manifest non-application of mind on the part of the Court granting the bail or if the materials on record do not justify the ground of the same. Bail can also be cancelled if the order suffers from serious infirmities resulting in miscarriage of justice.

42. The learned Chief Judicial Magistrate had granted interim bail to the opposite parties nos. 3 and 4 on September 28, 2020 on their surrender. He had stated in his order that the opposite parties nos. 3 and 4 were not the principal accuseds, there were no allegation of forgery against them and that their custodial detention was not needed. On November 18, 2020 he had

confirmed the interim bail after finding that there no adverse report against them and they had complied the conditions for bail. The reasons contained in such two orders being adequate and there being no ground to set aside the same, no interference is called for in respect of them.

43. In the order dated February 11, 2021, the learned Chief Judicial Magistrate has ascribed the following reasons for granting bail to the opposite party no.2 :-

(i) Co-accuseds were already on bail after surrendering before the Court,

(ii) A period of eight months had elapsed from June 22, 2020 when the FIR was lodged till February 11, 2021 with nothing being in the case diary to show that the investigating officer tried to apprehend the opposite party no. 2 for the purpose of investigation,

(iii) The case was document based and was coupled with the allegations of matrimonial disputes,

(iv) All documents in connection with the case had been seized by the investigating officer.

44. As has been noted in paragraph 43 above, the learned Chief Judicial Magistrate has ascribed four primary reasons for granting bail to the opposite party no. 2. First reason that the learned Chief Judicial Magistrate has ascribed is that the co-accuseds were already on bail after surrendering before the Court. Such a ground, cannot be sustained in the facts of the present case, as the order granting bail to the co-accuseds had been premised on the ground that, the co-accuseds were not the principal accused. Here, the opposite party no. 2 as the husband of the de facto complainant has been arranged as the principal accused. Therefore, the consideration simpliciter that, co-accuseds had been granted bail is of no consequence in granting bail to the opposite party no. 2.

45. The learned Chief Judicial Magistrate has taken into consideration the quantum of time taken by the investigating agency from the date of the lodgment of the FIR till the date of the application for bail and the lack of effort on the part of the investigating agency to apprehend the opposite party no. 2 in the meantime as a ground to grant bail to the opposite party no. 2. The learned Chief Judicial Magistrate has failed to take into consideration relevant materials in the case diary relating to the

seizure of the documents in respect of the forgeries alleged. There are seizure lists in the case diary which suggest that the police had been seizing various documents from various authorities relating to the driving license, PAN application form and the bank account opening form executed by the opposite party no. 2 impersonating himself as Harsh Singh. The learned Chief Judicial Magistrate has failed to appreciate that unearthing, collecting and seizing such documents was a time consuming affair particularly when the opposite party no. 2 was not providing any information with regard thereto.

46. The 3rd and the 4th reasons which the learned Chief Judicial Magistrate has ascribed for grant of bail to the opposite party no. 2 on February 11, 2021 are that the case was document based coupled with allegations of matrimonial dispute and that all documents in connection with the case were seized by the investigating officer. Again, with deepest respect, the Chief Judicial Magistrate has failed to take into account the gravity of the offence of forgery alleged in the present case. The allegations levelled against the opposite party no. 2 are that he had impersonated himself as Harsh Singh, forged documents and obtained PAN card and open bank accounts on such basis. The

learned Chief Judicial Magistrate has failed to take into account that the nature of forgery was such that its impact was not limited to private individuals and that there was an angle of impact on the state exchequer by reason of such impersonation and dual identities of the opposite party no. 2.

47. The learned Chief Judicial Magistrate has failed to take into account the materials that were in the case diary on the dates on which he granted bail to the private opposite parties. Therefore, in our view, since the learned Chief Judicial Magistrate has proceeded on irrelevant considerations and failed to take into account the relevant materials in the case diary, the gravity of the offence and the involvement of the private opposite party no. 2 therein we are of the view that the orders granting bail to the private opposite party no. 2 needs to be cancelled.

48. The learned Chief Judicial Magistrate has exercised powers under Section 437 of the Criminal Procedure Code in granting bail to the private opposite parties. The legality and validity of exercise of such powers in the facts and circumstances of the present case have been questioned in the instant proceedings.

49. The parameters for grant of bail by a Court other than the High Court or the Court of Sessions in case of non-bailable offence has been prescribed in Section 437(1) of the Criminal Procedure Code. Section 437(1) of the Criminal Procedure Code has compartmentalized the power to grant bail by a Court other than the High Court or the Court of Sessions based on the severity of the punishment prescribed for the offence alleged against the accused.

50. In the facts of the present case, the learned Chief Judicial Magistrate by the order dated February 11, 2021 did not grant bail to the opposite party no. 2 on the ground of the opposite party no. 2 being sick or infirm.

51. As has been recognized in ***In Re: Sant Lal Gupta (supra)***, the power of the Magistrate to grant bail under Section 437 of the Criminal Procedure Code stands completely negated when one of the alleged offences involved is found to be punishable either with death or imprisonment for life unless the first proviso to Section 437(1) of the Criminal Procedure Code stands attracted. The remedy available to such an accused is under Section 439 of the Criminal Procedure Code, in the event he was arrested for such

offences, was to approach the Court of Sessions or the High Court.

52. The embargo under Section 437(1) in respect of offences punishable either with death or imprisonment for life comes into operation upon the formation of the opinion of the Court, on the basis of materials produced before it, that there are reasonable grounds for believing that the accused is guilty of such offences.

53. In the facts of the present case, all the private opposite parties have been accused of offences inter alia under Section 467 of the Indian Penal Code, 1860 which is punishable with imprisonment for life. The learned Chief Judicial Magistrate has returned a finding that the opposite parties nos. 3 and 4 were not the principal accuseds. The materials in the case diary presently available does not prima facie establish a nexus between the opposite parties nos. 3 and 4 with the offence under Section 467 of the Indian Penal Code, 1860. Consequently the learned chief Judicial Magistrate did not act in excess of jurisdiction which granting interim bail to the opposite parties nos. 3 and 4 on September 28, 2020 and subsequently confirming the same on November 18, 2020.

54. So far as the order dated February 11, 2021 is concerned the case diary contains sufficient materials to reasonably believe that the opposite party no. 2 can be justifiably accused of an offence under Section 467 of the Indian Penal Code, 1860.

55. However, in respect of the opposite party no. 2 the case diary has sufficient materials for believing, off course at a prima facie level, that he is complicit in the offences inter alia under Section 467 of the Indian Penal Code, 1860. The case diary had sufficient materials on February 11, 2021 when the bail was granted to form a prima facie opinion as to the complicity of the opposite party no. 2 in the offences inter alia under Section 467 of the Indian Penal Code, 1860. Therefore, the learned Chief Judicial Magistrate had acted in excess of jurisdiction in granting bail to the opposite party no. 2 when there were reasonable grounds for believing that the opposite party no. 2 was guilty of offences under Section 467 of the Indian Penal Code, 1860. On the anvil of Section 437 of the Criminal Procedure Code, the order of the learned Chief Judicial Magistrate dated February 11, 2021 granting bail in favour of the opposite party no. 2 is therefore without jurisdiction and consequently a nullity.

56. In view of the discussions above, we find no grounds to interfere with the orders dated September 28, 2020 and November 18, 2020 of the learned Chief Judicial Magistrate. We however, set aside the order dated February 11, 2021 of the learned Chief Judicial Magistrate granting bail to the opposite party no. 2. The bail granted to the opposite party no. 2 stands cancelled. The opposite party no. 2 shall surrender before the jurisdictional Sessions Court within a fortnight from date. The Sessions Court, if approached with a prayer for bail is at liberty to consider the same being uninfluenced by the observations made herein. In default of the opposite party no. 2 not surrendering within the time stipulated herein, the learned Chief Judicial Magistrate and the police are at liberty to proceed against the opposite party no. 2.

57. CRM 2603 of 2021 along with CRAN 1 of 2021 and CRAN 2 of 2021 are disposed of accordingly. The certified true copy of the

case diary kept with records on March 1, 2022 be returned forthwith.

[DEBANGSU BASAK, J.]

58. I Agree.

[BIBHAS RANJAN DE, J.]