

19.09.2022
Sl. No.42
akd

C. R. M. (DB) 928 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 04.04.2022 :

A N D

In Re : M/s. Dia Gold Jewels Pvt. Ltd. Petitioner

Mr. Sabyasachi Banerjee
Mr. Ajitesh Pandey
Ms. Nahid Ahmed

... ... for the petitioner

Mr. Shibaji Kumar Das
Mr. Samrat Ghosh
Ms. Rupsa Sreemani

... ... for opposite party no. 2

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

... ... for the State

Supplementary affidavit has been filed assailing the order dated 07.04.2022 confirming the interim bail granted to the opposite party no.2 viz. Amit Sharma.

Petitioner has also assailed the order confirming the interim bail granted to opposite party no.2.

It is submitted on behalf of the petitioner that opposite party no.2 was an employee of the petitioner company. He was entrusted with the duty of carrying gold ornaments from the head office/godown of the company to its showroom at Salt Lake and to various customers. It is alleged opposite party no.2 in conspiracy with one Neelam Sahu, who was the in-charge of the Salt Lake showroom had misappropriated gold ornaments to the tune of Rs. One crore. He was arrested on 14.01.2022 and by the impugned orders he was enlarged on bail without considering the gravity of the offence and other relevant matters.

Mr. Sabyasachi Banerjee, learned advocate appearing for the petitioner argues the court below failed to consider the gravity of the offence which involved misappropriation of gold valued over Rs. One crore. A meager amount of stolen property was recovered from the accuseds. Co-accused viz. Neelam Sahu is still at large. Investigation is in progress. Custodial detention of opposite party no.2 would help in further recoveries and apprehension of co-accused.

Mr. Shibaji Kumar Das, learned advocate for the opposite party no. 2 submits his client is not the principal accused. As per the FIR, gold ornaments were stolen from the shop. His client did not have control and dominion over them. During police custody his client was subjected to custodial interrogation and a silver stud was recovered. Further detention is not necessary.

We have considered the materials on record. Statements of witnesses and other materials show opposite party no.2 was entrusted with the duty of carrying gold ornaments to the showroom and to other customers. In collusion with one Neelam Sahu, opposite party no.2 misappropriated gold ornaments valued to the tune of Rs. One crore. Learned Magistrate while granting bail to the opposite party no.2 failed to consider the gravity of the offence.

It has been argued opposite party no.2 has cooperated with the investigation and did not misuse the liberty granted to him.

Having considered the aforesaid materials on record, we are of the opinion the court below failed to consider the gravity of the offence and necessity of further detention of opposite party no.2 for progress of investigation. These are relevant considerations in the matter of grant of bail. Failure to do so renders the order vulnerable.

Learned Magistrate also failed to consider that allegations had been made that opposite party no.2 had forged approval slips by the Directors of the petitioner company. Considering the nature of accusation, his prayer for bail came to be rejected on 16.02.2022. Specimen signature of the accused was taken on 19.02.2022. Within ten days thereof, the court below was inclined to enlarge the opposite party no.2 on interim bail. It failed to consider that investigation with regard to his involvement in alleged forgery was in progress. Court below only adverted to the issue of apprehension of a co-accused and not the involvement of the opposite party no.2 in the graver offence of forgery which was pending investigation.

In view of the aforesaid circumstances, we are inclined to cancel the bail granted to opposite party no.2.

Accordingly, orders dated 28.02.2022 & 07.04.2022 granting bail to opposite party no.2 are set aside.

Opposite party no. 2 is directed to surrender before the court below within seven days from date failing which the Investigating Agency as well as the court below shall be at liberty to resort to appropriate processes for his apprehension in accordance with law.

Observations made in this order are for the purpose of disposal of this application and shall not have bearing at the subsequent stage of the proceeding which shall be dealt with independently on the basis of the materials on record.

CRM (DB) 928 of 2022 is thus disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)