

05-07-2022
Subha
Item no. 29
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

CRM (SB) 67 of 2022

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

**Sri Shyama Pada Biswas
-Versus-
State of West Bengal & Anr.**

Mr. Sekhar Pal
Mr. Mobakshar Islam

.....for the petitioner.

Mr. Navanil De
Mr. Subhrajit Dey

.....for the O. P. No.2.

Mr. Prasun Kumar Dutta
Mr. Md. Kutubuddin
Mr. Santanu Dey Roy

....for the State.

Learned advocate for the petitioner emphasizes that the order impugned suffers from illegality in view of the fact that the accused on the very first date was granted bail without affording the investigating agency any opportunity to recover the cheated/defrauded amount of Rs.25 lakhs.

Learned advocate for the petitioner further submits that in view of the aforesaid, the police authorities conducted half-baked investigation and submitted chargesheet without ascertaining or collecting proper evidence.

Subsequently, the petitioner applied for further investigation of the case under Section 173(8) of the Code of Criminal Procedure and the learned Magistrate was pleased to allow the same. Presently, further investigation of the case is in progress.

Learned advocate for the petitioner expresses his apprehension regarding the fact that the accused persons are influential and they have already influenced the Investigating Agency in filing a cryptic chargesheet. Presently, there is every possibility that the petitioner would influence the same Investigating Agency.

Mr. De, learned advocate appearing for the accused resists such submissions of the petitioner. According to the learned advocate there has been complete change of circumstances and all the parameters required for consideration of a bail application was complied by the learned Magistrate and as such, no interference is called for by this court.

Mr. Dutta, learned Additional Public Prosecutor appearing for the State submits that further investigation is being conducted by the police authorities pursuant to the order passed by the learned Magistrate and leaves it to the court for deciding regarding the issue of cancellation of bail.

I have perused the application for cancellation of bail and the affidavit-in-opposition filed at the instance of the accused/opposite party no. 2 as well as the affidavit-in-reply filed by the petitioner.

Record of this application reflects that the subject matter of challenge related to the order dated 9th February, 2022. It has been specifically observed that the accused was granted initial interim bail on 5th December, 2020 and the said interim bail was confirmed on 19th December, 2020.

The application for cancellation of bail which is the subject matter was on the foundation of certain G.D entry wherein the present petitioner alleged before the police authorities and drew the attention of the learned Magistrate regarding the threats which were given to him and as such, prayed for cancellation of bail.

The learned Magistrate on an appreciation of the contents of the G. D. entry as well as the date on which the interim bail order was passed referred that the chronology of events which had taken place including the factum of chargesheet being

submitted and rejected the contention of the present petitioner for cancellation of bail.

Today, it has been submitted before this court that further investigation of the case is in progress.

The issue so raised by the petitioner relate to question of fact particularly with regard to the recovery of the alleged sum of Rs.25 lakhs, which according to the petitioner could not be effected because of the order passed by the learned court and the inaction of the police authorities.

Having regard to the order passed by the learned Magistrate, I am of the opinion that learned Magistrate exercised his due diligence and passed a reasoned order refusing to cancel bail. There are changed circumstances in the instant case as further investigation is in progress. Having regard to the same, I am of the opinion that it would be for the State at an appropriate stage to consider, if at all, as to whether the custody of the accused is any further required or not. For the present, I am of the opinion that no further interference is called for in respect of the order dated 9th February, 2022 passed by the learned Chief Judicial Magistrate, 24 Parganas(S).

With the aforesaid observations, CRM (SB) 67 of 2022 is disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

