

19.05.2022
Item No.07
Suman/Mithun
Ct.42

CRM (SB) 70 of 2022

In Re: An application for cancellation of bail under Section 439(2) read with Section 482 of the Code of Criminal Procedure in connection with G.R. Case No. 714 of 2021 arising out of Muchipara Police Station Case No.163 dated 09.09.2021 under Sections 120B/420 of the Indian Penal Code and 63/65 of the Copyright Act.

And

In the matter of: **Srikanta Pradhan**
Vs.
The State of West Bengal & Anr.

Mr.Sandipan Ganguly, Sr. Adv.
Mr. P. K. Jana
Mr. Satadru Lahiri
Mr. Gourab Banerjee
Mr. Sourav Jana
Mr. Safdar Azam
...for the petitioner

Mr. Sabyasachi Chatterjee
Mr. Sayan Banerjee
Mr. Samrat Paul
...for the opposite party No.2

Mr. Rudradipta Nandy
...for the State

This is an application for cancellation of bail granted by the learned Additional Chief Metropolitan Magistrate -II, Calcutta in connection with G.R. Case No. 714 of 2021 arising out of Muchipara Police Station

Case No.163 dated 9th September, 2021 under Sections 120B/420 of the Indian Penal Code and Sections 63/65 of the Copyright Act. Muchipara Police Station Case No.163 dated 9th September, 2021 was registered against the opposite party No.2. On the basis of the allegation of criminal conspiracy, cheating and infringement of registered trade mark of Shambhu Nath & Bros., manufacturer of Toofan Brand Electric Fan. The de facto complainant is the office assistant of the said partnership firm and he lodged the complaint being authorized by the partners of the firm alleging, inter alia, that the partnership firm is the manufacturer of electric fans and parts thereof under registered trade mark "tooFAN". The product of the petitioner's firm achieved impeccable reputation amongst its customers by its quality of products, performance, durability and after sale service. It is alleged that some unscrupulous persons at Premises No.1B Sashibhusan Street, Kolkata-700012 are manufacturing fans replicating the artistic label and also using the same trade mark and style of the said fan.

On the basis of the said complaint police registered the above numbered case and took up investigation of the same. During investigation it is ascertained that the petitioner No.2 is the manufacturer of electric fan under the trade name and style of "Raider" but the

petitioner not only replicated the distinctive make and artistic label of "tooFAN" fan but he has also used the trade name on his brand and also used the warranty card printed in the name of "tooFAN" fan.

Mr. Sandipan Ganguly, learned senior counsel on behalf of the petitioner submits that the opposite party No.2 filed an application under Section 438 of the Code of Criminal Procedure apprehending arrest in connection with the said Muchipara Police Station Case No.163 before the learned Chief Judge, City Sessions Court, Calcutta. The learned Judge, City Sessions Court rejected the prayer for anticipatory bail made by the opposite party No.2. Subsequently, the petitioner preferred an application for anticipatory bail before this Court by filing an application under Section 438 of the Code of Criminal Procedure which was registered as CRM 7542 of 2021. By an order dated 22nd December, 2021 a Division Bench of this Court directed the petitioner to meet the Investigating Officer of the case on 29th December, 2021 and 3rd January, 2022 to co-operate with the investigation. By an order dated 28th March, 2022 the said CRM No.7542 of 2021 was dismissed as not pressed. Subsequently, on 2nd April, 2022 the opposite party No.2 surrendered before the learned Additional Chief Metropolitan Magistrate-II, Calcutta by filing a put up petition. An application for

bail under Section 437 of the Code of Criminal Procedure was filed by the opposite party No.2 before the Court of the learned Magistrate. On 2nd April, 2022 the learned Magistrate passed the following order:-

"Heard Ld. Advocates for the accused person, who prayed for bail on the ground that due to business rivalry, the instant complaint has been lodged against their client, though he is no way connected with the alleged offence. Ld. Counsel submitted some documents with firsti in support of the business of his client, having 'Trade Mark 'Raider' and further submitted that on 16.04.2022, the marriage of the daughter of the accused will be solemnized and if the bail is not granted, the entire programme will be ruined. Ld. Advocate concluded his submission by stating that his client will abide by any condition, imposed by this Ld. Court, if bail will be granted.

Ld. A.P.P. prayed for necessary order.

Heard both sides. Perused the documents submitted by the accused and other materials on record.

Considered.

It appears from the record as well as from the documents submitted on behalf of the accused that previously the prayer of anticipatory bail of this accused was rejected by the Ld. Chief Judge, City Sessions

Court, Calcutta on the ground of non-cooperation with the investigating authority, but subsequently the accused complied the notices served upon him u/s 41A Cr. P.C. Here, the accused person voluntarily surrendered before the Court today and as he has fixed place of residence at Kolkata, so in my opinion there is no scope of his absconding.

Hence, considering all aspects, I am inclined to allow the prayer for bail in favour of the accused person but in interim form with condition, due to pending investigation.

The accused person may find A.I. bail on furnishing bond of Rs.5,000/- with one registered surety of like amount, i.d. to J.C. till 16.04.2022 with conditions 1) **the accused person is directed to meet the I.O. twice in a week till further order, 2) the accused person is directed not to leave the jurisdiction of Kolkata without prior permission of this Court and 3) the accused person is also directed that he shall not directly or indirectly make any inducement, threat or promise to any person or any other witnesses acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court, 4) the accused is directed not to take any endeavour to tamper any evidence of this case."**

Being aggrieved against the above order, the de-facto complainant/petitioner has filed the instant criminal motion praying for cancellation of bail of the opposite party No.2. It is submitted by Mr. Sandipan Ganguly, learned Senior Counsel for the petitioner that the learned Chief Judge, City Sessions Court, Calcutta rejected the prayer for anticipatory bail of the opposite party No.2 on the ground that the opposite party No.2 failed to comply with the direction of attending the police station to meet the Investigating Officer under Section 41A of the Code of Criminal Procedure. The learned Chief Judge, City Sessions Court also considered that anticipatory bail could not be granted at that stage of investigation meaning thereby that custodial interrogation was necessary for the purpose of proper investigation of the case. Furthermore, when the prayer for anticipatory bail was dismissed being not-pressed by the Division Bench of this Court, custodial interrogation of the accused/opposite party No.2 is deemed to be considered to be more necessary and expedient for proper investigation of the case that the custodial interrogation of the accused was absolutely necessary. However, on 2nd April, 2022 the opposite party No.2 surrendered before the Trial Court and prayed for regular bail suppressing the fact that once his anticipatory bail was rejected and on the next occasion, he did not press for

hearing of the application for anticipatory bail. It is further submitted by Mr. Ganguly that the learned ACMM-II, Calcutta while granting regular bail to the accused did not consider the gravity of offence. Secondly, the learned Magistrate granted the prayer for bail without perusal of the case diary. It is also pointed out by Mr. Ganguly that the observation made by the learned Magistrate in respect of compliance of notices under Section 41A of the Code of Criminal Procedure is absolutely false and contrary to the record. The learned Chief Judge, City Sessions Court observed in his order dated 2nd November, 2021 that the accused did not cooperate with the Investigating Officer in compliance of the notice under Section 41A of the Code of Criminal Procedure. The accused had met with the Investigating Officer on the basis of an interim order passed by the Division Bench of this Court in CRM No.7542 of 2021 on 29th December, 2021 and 3rd January, 2022. Therefore, the accused did not meet the Investigating Officer voluntarily after receiving notice under Section 41A of the Code of Criminal Procedure. The Division Bench of this Court had to pass an order directing him to meet the Investigating Officer on 29th December, 2021 and 3rd January, 2022.

It is further submitted by Mr. Ganguly, learned Counsel on behalf of the petitioner that the accused was granted bail on the ground that he is a resident of Calcutta and there is

no scope of his absconding. This cannot be a ground for granting bail. When the investigation is pending upon a serious allegation that the accused had infringed the copyright and trade mark of 'tooFAN' fan and committed cheating and criminal conspiracy against the petitioner.

The learned Public Prosecutor-in-Charge submits that custodial interrogation of the accused is absolutely necessary because the Investigating Officer of this case wants to recover and seize the dice of the fan manufactured by the accused as well as the machines for manufacturing various spare parts of the fan to compare as to whether the accused has only infringed the copyright and trade mark or also replicated the distinctive make of 'tooFAN' fan.

Mr. Sabyasachi Chatterjee, learned Advocate for the opposite party No.2 submits that the accused received notice under Section 41A of the Code of Criminal Procedure on 16th October, 2021 and he met the Investigating Officer on 22nd October, 2021. Subsequently, the opposite party No.2 met the Investigating Officer on 24th March, 2022. Therefore, opposite party No.2 is cooperating with the Investigating Officer in the investigation.

It is further submitted by Mr. Chatterjee that failure on the part of the accused to state that once his application for anticipatory bail was rejected and on the second time it was not pressed is not a relevant consideration while considering an application for bail under Section 437 of the

Code of Criminal Procedure. The learned Magistrate also did not commit any wrong by granting bail after due consideration of the fact that the accused has been complying with the notice under Section 41A of the Code of Criminal Procedure. It is also submitted by Mr. Chatterjee that when the Investigating Officer issued notice under Section 41A of the Code of Criminal Procedure, it ought to be held that since the accused has been complying with the notices under Section 41A of the Code of Criminal Procedure, his arrest is not primarily necessary. Mr. Chatterjee further submits that the learned Magistrate duly considered the gravity of the offence and therefore, he passed the order of interim bail imposing stringent condition upon the accused.

Having heard the learned Counsel for the parties and on careful consideration of the entire materials on record, it is found that the order passed by the learned ACMM-II, Calcutta on 2nd April, 2022 granting bail to the accused is not at all satisfactory. The learned Magistrate observed in his order that previously the prayer for anticipatory bail of the accused was rejected by the learned Chief Judge, City Sessions Court on the ground of non-cooperation with the Investigating Authority. However, the learned Magistrate found that subsequently the accused complied with the notices served upon him under Section 41A of the Code of Criminal Procedure. It appears from the affidavit-in-

opposition that the accused appeared before the Investigating Officer in compliance with the notice under Section 41A of the Code of Criminal Procedure on 22nd October, 2021. Muchipara Police Station Case No.163 was registered on 9th September, 2021. Prayer for anticipatory bail was rejected for the first time by the learned Chief Judge, City Sessions Court on 2nd November, 2021. There is an endorsement of the Investigating Officer on the notice dated 16th October, 2021 that though the accused attended the police station to meet the Investigating Officer and he was interrogated, his explanation was not satisfactory. There is also no endorsement to show that the accused actually appeared in compliance of such notice issued on 22nd October, 2021 and 24th March, 2022. On perusal of the case diary it is found that an application for cancellation of bail of the accused person was filed on behalf of the prosecution on 8th April, 2022 and the learned ACMM-II fixed 23rd June, 2022 for hearing of the petition.

Section 41A of the Code of Criminal Procedure aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalized. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), is quoted below:-

“41A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of

Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested unless for

reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CR.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.”

Plain reading of Section 41A suggests that it is incumbent upon the police officer in all cases where arrest of a person is not required under the provision of sub-section (1) of Section 41 to issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence. Law obliges an accused who receives a notice under Section 41A of the Code of Criminal Procedure to appear before the police officer and it further mandates that if such an accused complies with the terms of notice, he shall not be arrested, unless for reasons to be recorded the police officer is of the opinion that the arrest is necessary.

In the instant case the accused surrendered on 2nd April, 2022 before the learned ACMM-II, Calcutta. On the very date of surrender, the learned Magistrate granted bail to the accused without calling for the case diary. It was not within the knowledge of the Investigating Officer that the accused would surrender on 2nd April, 2022. The learned A.P.P. attached to the Court of the ACMM-II, Calcutta could not

have the opportunity to place the case diary and submit before the learned Magistrate as to whether custodial interrogation of the accused was necessary or not. The Investigating Officer was also not notified to assist the learned A.P.P., Calcutta Police Court by production of the case diary. The learned Magistrate did not consider that huge quantity of ceiling fan containing in boxes with trade mark of 'tooFAN' and warranty cards were seized from premises No.1/B, Sashi Bhushan Dey Street under occupation of the accused.

Therefore, the impugned order cannot be sustained.

The order dated 2nd April, 2022 is cancelled.

The Investigating Officer is at liberty to arrest the accused for proper investigation of the case.

The Investigating Officer is also directed to forward a checklist and furnish the reasons and materials, which necessitated the arrest of the accused to the learned ACMM-II, Calcutta at the time of production of the accused.

Let a copy of this order be sent to the Investigating Officer through the learned Public Prosecutor-in-Charge forthwith for compliance.

The instant application, is, thus, **disposed of.**

(Bibek Chaudhuri, J.)

