

13.05.2022

Sl. No. 09
Srimanta
Ct.No.42

CRM (SB)/73/2022

(Via Video Conference)

In Re : An application for cancellation of bail under Section **439(2)** read with Section **482** of the Code of Criminal Procedure, 1973 in connection with **Entally** Police Station Case No. **282/2020** dated **24.10.2020** under Sections **341/323/506** of the Indian Penal Code, 1860.

In the matter of : **Sri Bikash Pal @ Bikash Paul**

...petitioner.

Mr. Indranuj Dutta, Adv.,
Mr. Asmanur Quail, Adv.,
Mr. Rahul Ghosal, Adv.,
Mr. Bikram Basak, Adv.

...for the petitioner.

Mr. Anand Keshari, Adv.

...for the State.

Mr. Asis Bhattacharyya, Adv.

...for the opposite party nos. 2.

Affidavit-of-service filed in Court today be kept with the record.

The opposite party no. 2 was granted bail in G.R. Case No. 282/2020 under Sections 341/323/506 of the Indian Penal Code. It is needless to say that the allegation made out against the opposite party no 2 is bailable in nature and accordingly as a right he was released on bail.

The instant petition for cancellation of bail is filed on the ground of post bail conduct. It is alleged that the opposite party no. 2 has been threatening the petitioner/*de facto* complainant with dire consequence brandishing sharp cutting weapon. He also manhandled the *de facto* complainant. He

picks up quarrel very often with the *de facto* complainant and not only the *de facto* complainant but also local people are disturbed and annoyed against the opposite party no. 2. The Learned Advocate for the petitioner takes me to the relevant pages of the annexures to the petition for cancellation of bail. It appears from the said annexures that on the basis of a complaint made by the *de facto* complainant a proceeding under Section 107 of the Code of Criminal Procedure was initiated and the same is still pending.

The Learned Advocate for the opposite party no. 2 submits that the opposite party no. 2 and the petitioner are two brothers. Dispute cropped up after the death of their mother over the ancestral property. Her mother left a Will and a probate proceeding is going on between the parties.

Having heard the Learned Advocates for the parties this Court is of the view that when a proceeding under Section 107 of the Code of Criminal Procedure is pending against the opposite party, it is open for the Learned Executive Magistrate to accept bond of peace and good behaviour. If he violates the conditions of the said bond, the Learned Executive Magistrate is empowered to take punitive measure including detention of the opposite party in custody. Therefore, when the proceeding under Section 107 of the Code of Criminal Procedure is pending, I am not inclined to cancel the bail of the opposite party no. 2.

However, the opposite party no. 2 is directed not to create any disturbance or trouble in respect of the peaceful residence of the petitioner in the house during the pendency of G.R. Case No. 2718/2020.

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

(Bibek Chaudhuri, J.)

