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August 1,
2022
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C.R.M. (SB) 75 of 2022

In Re: An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure, 1973;

Shruti Jaiswal (nee Saha)
Versus
The State of West Bengal and another

Mr. Sourav Chatterjee,
Mr. Soumya Nag,
Mr. Abhinav Rakshit.
...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Sandip Chakraborty,
Mr. Shiladitya Banerjee.
...for the State.

Mr. Sabir Ahmed,
Mr. Apalak Basu,
Mr. Arkaprava Sen,
Mr. Sayak Chakraborty,
Mr. Arka Chakraborty.
...for the opposite party no.2.

The present application was preferred for cancellation of bail in connection with the order dated 21.03.2022 passed by the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas in A.C.G.R. Case No.844 of 2022 arising out of Survey Park Police Station Case No.21 dated 02.03.2022 under Sections 498A/341/323/506/406 of the Indian Penal Code granting interim bail to the opposite party no.2.

In course of hearing of this application, a report was submitted before this Court by the Investigating Officer of this case on 29.07.2022. The report is restricted to the issues relating to the

alleged jewellery which were complained by the present petitioner and its recovery.

Mr. Sabir Ahmed, learned advocate appearing for the private opposite party no.2 handed over the certified copy of the order dated 14.03.2022 which was passed pursuant to an application made by the Investigating Officer of the case on the said date, wherein the prayer was advanced by the Investigating Officer of the case for adding Section 406 of the Indian Penal Code and for inclusion of name of certain accused persons.

Learned ACJM, Alipore rightly observed that for addition of Section permission is not required. It is simply intimation made to a court of law. The same principle would apply in case the Investigating Officer intends to implicate somebody as accused. It is not for the court to decide as to who should be made an accused if the materials so surface in course of the investigation. The exclusive domain in such circumstances is vested with the Investigating Officer of the case on the basis of the materials collected by the Investigating Officer and his opinion as to whether there is complicity of such person in the alleged offence.

The Investigating Officer is believed to advance such prayer under Section 406 of the Indian Penal Code on the basis of the communication made by the petitioner to the Officer-in-Charge, Survey Park Police Station on 12.3.2022 by the defacto-complainant.

Be that as it may, the investigation of the case is under progress. The court would never act as an adviser to either the

petitioner or the accused. The order dated 21.03.2022 passed by the learned ACJM, Alipore to the extent that “subsequent statement on the basis of which Section 406 of the Indian Penal Code has been added” is not in consonance with the materials available in the case diary. It is not necessary that a statement would ordinarily be a statement under Section 161 of the Cr.P.C. The de facto complainant or the informant in a case under Section 498A of the Indian Penal Code obviously would be at liberty to communicate her grievance which can be treated to be her statement during the progress of investigation. It is for the Investigating Agency either to believe or disbelieve the complainant and her allegations. If the Investigating Officer is of the opinion that there were jewellerys and the said jewellerys were supposed to be kept in a locker, it would be for the Investigating Agency/Officer to exhaust the provisions of law by intimating the concerned bank authorities regarding the steps to be taken. The court of law will never advise the Investigating Agency/Officer as to what steps are to be taken in course of investigation.

It has been informed by both the parties that the interim bail of the petitioner is still continuing and yet to be confirmed by the learned ACJM, Alipore. Any adverse opinion of this Court may affect the rights of the parties. Accordingly, I direct the Investigating Officer of the case to take steps as it deems fit and proper for eliciting the truth in respect of the allegations made by the petitioner. So far as the prayer for cancellation of bail is concerned, the same is not interfered with.

It has been informed that next date is fixed on 30th August, 2022. The learned ACJM, Alipore would decide on the issue of confirmation of bail after the Investigating Officer submits a report regarding a substantial progress in the investigation of the case. The present petitioner would be at liberty to address her grievance on the date so fixed regarding the steps taken by the Investigating Officer.

With the aforesaid observations, CRM (SB) 75 of 2022 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)