

05.07.2022
cm/PA
ct 28

C.R.M.(DB) 1158 of 2022

sl no. 46

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

And

In Re : Pooja Sharma

..... petitioner

Mr. Soumya Nag
Mr. Aditya Tiwari

... for the petitioner.

Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Manoranjan Mahata

.... for the State

Mr. Jagannath Ganguly

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

Petitioner has assailed order dated 23.02.2022 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas refusing to cancel the bail granted to opposite party No.2 in connection with Electronic Complex Police Station Case No. 74 dated 16.11.2020 under Sections 493/417/376 of the Indian Penal Code.

Electronic Complex case No. 74 dated 16.11.2020 was registered on the basis of a complaint lodged by the petitioner alleging that the former had met opposite party No.2 in the month of December, 2017 at her workplace where both of them used to work. Intimacy developed between them from January, 2018. When petitioner asked opposite party No.2 to marry her, he gave various excuses to postpone the proposal but assured her he would finally marry her. Parents of the petitioner, however, were opposed to the match as opposite party No.2 belonged to a different religion.

Thereafter, opposite party No.2 took money from the petitioner on various pretext and when she became pregnant he refused to marry her and compelled her to abort the child. Subsequently, he took her to Digha and forcibly raped her. She again became pregnant in January / February, 2020. Thereafter, on enquiries petitioner came to know opposite party No.2 is a married man and had relationship with various women in similar manner.

The aforesaid criminal case was initially registered under Section 493/417 of the Indian Penal Code. Apprehending arrest opposite party No.2 approached this court and prayed for pre-arrest bail in CRM 10926 of 2020. During hearing of the application, the petitioner opposed the prayer for anticipatory bail and submitted offence under Section 376 IPC though disclosed in the facts of the case, had not been added to the First Information Report.

In view of such submission, a co-ordinate Bench of this Court while considering the prayer for pre arrest bail gave direction to the investigating agency to address the grievance of the de-facto complainant. Taking cognizance of such submission regarding applicability of Section 376 of the Indian Penal Code and other relevant factor the said Bench was pleased to grant pre-arrest bail to the opposite party No.2 subject to conditions. In view of the observations of the said Bench, Section 376 was added to the array of offences and charge-sheet came to be filed under Section 493/376/417 of the Indian Penal Code against the opposite party No.2. Learned Magistrate upon taking cognizance of the aforesaid

offences issued notice upon opposite party No.2 to appear before the court. Pursuant such notice opposite party No.2 duly appeared before the learned Magistrate and in light of the pre-arrest bail granted by this Court, the Magistrate was inclined to enlarge him on bail. At this stage, petitioner prayed for cancellation of bail principally on the ground that offence under Section 376 IPC was subsequently added in the case.

In this regard petitioner relied on **Pradeep Ram Vs. State of Jharkhand & Anr**¹. Learned Magistrate, however, by order dated 23.02.2022 refused such prayer for cancellation.

Learned Counsel for the petitioner contends learned Magistrate fail to take consideration the directions of the Apex Court in **Pradeep Ram** (Supra) and the impugned order is liable to be set aside on such score.

Learned Additional Public Prosecutor for the State produces the case diary and submits pursuant to the direction of this Court in CRM No. 10926 of 2020 Section 376 of the Indian Penal Code was subsequently added and charge-sheet was accordingly filed.

Learned lawyer for the opposite party No.2 submits the Bench while dealing with his prayer for pre-arrest bail was fully cognizant of the plea for addition of Section 376 of the Indian Penal Code to the array of offences and had directed the Investigating Agency to act accordingly. Hence, bail granted by the Magistrate in terms of the order of pre-arrest bail in CRM No. 10926 of 2020 does

¹ (2019)17 SCC 326

not suffer from non-application of mind and ought not to be set aside.

The controversy arising in the case essentially revolves around applicability of the directions in **Pradeep Ram** (supra) to grant of bail to opposite party No.2 in the peculiar facts of this case. Admittedly, First Information Report was registered under Section 493/417 of the Indian Penal Code. At that stage, opposite party No. 2 prayed for pre-arrest bail. Petitioner opposed the prayer for anticipatory bail and prayed for addition of Section 376 of the Indian Penal Code to the FIR. Upon taking cognizance of such prayer, and directing the Investigating Agency to address the grievance of the petitioner, the Bench proceeded to consider and allow the prayer of pre-arrest bail on merits.

The aforesaid factual matrix is clearly distinguishable from **Pradeep Ram** (supra). In the cited case the accused had been enlarged on bail in a case registered under various offences of the Indian Penal Code. After the bail was granted, investigation of the case was transferred to NIA and graver offences under UAPA Act were added. On the other hand, in the present case the Bench considering the prayer for pre-arrest bail was cognizant of the plea of the petitioner for addition of offence under Section 376 of the Indian Penal Code and directed the Investigating Agency to address such issue. After taking into consideration the aforesaid fact and other relevant aspects of the case, the Bench allowed the prayer for pre-arrest bail. Pursuant to the observation of the Bench while granting the relief of pre-arrest bail, Section 376 of the Indian Penal

Code was added to the array of offences in the charge-sheet. Thus, it cannot be said that the Bench while granting the relief of pre-arrest bail to opposite party no. 2 was not cognizant of the applicability of the graver offence of Section 376 of the Indian Penal Code to the facts of the case. In this backdrop, the Magistrate allowed the prayer for regular bail to opposite party no. 2, in view of the order granting pre-arrest bail to him in CRM 10926 of 2020. Once this Court had granted pre-arrest bail to opposite party no. 2 after taking into consideration the plea for addition of section 376 IPC, it was not open to the Magistrate to consider the prayer for bail independently in the light of addition of Section 376 IPC to the case. Accordingly, we find no error in the order of granting bail to opposite party No.2.

Needless to mention, opposite party No.2 had duly complied with the directions of pre-arrest bail and there is no allegation of misuse of liberty on his part.

Application for cancellation bail being CRM (DB)1158 of 2022 is dismissed.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)