

18.07.2022
tkm/ct 28
sl no. 55

C.R.M. 6017 of 2020

In Re : An application for cancellation of bail under section 439(2)
of the Cr.P.C

And

In re : Sabyasachi Ghosh petitioner

Mr. S Pachhal
Mr. Shekhar Barman
Mr. Bivash Banerjee
Mr. Rohit Prasad

..... for the petitioner

Mr. Binay Panda
Ms Puspita Saha

..... for the State

Mr. Jayanta Narayan Chatterjee
Mr. D Banerjee
Ms. J Patra
Ms. S Ghosh

..... for the OP no. 1

Order dated 1.7.2020 granting pre-arrest bail to the petitioner is under challenge. Short issue which falls for consideration is whether learned sessions judge was justified in granting pre-arrest bail to opposite party no. 1 notwithstanding rejection of similar prayer by this court in CRM 2305 of 2020.

Learned counsel for the petitioner submits that the order was procured on suppression of material fact as would appear from text of the order wherein it is recorded that no application was either filed or rejected by this court.

Learned lawyer for opposite party no. 1 submits that such fact has been disclosed in the petition filed before the learned sessions judge.

We have considered the rival submissions of the parties. Perusal of the order impugned shows that the sessions judge was persuaded to entertain the prayer for anticipatory bail on the premise similar application for anticipatory bail had neither been filed nor rejected by this court. This is factually incorrect as prayer for anticipatory bail of opposite party no. 1 was rejected by this court in CRM 2305 of 2020. It is contended such fact had been disclosed in the petition seeking anticipatory bail. Even if it is so, the order impugned suffers from non-application of mind and is liable to be set aside on such score.

Even on merits, the learned sessions judge appears to have failed to consider gravity of the offence and materials on record which shows opposite party no. 1 had kicked a pregnant lady resulting in miscarriage.

Under such circumstances, we are constrained to hold that the order impugned suffers from clear non-application of mind and non-consideration of relevant materials including gravity of the offence and cancel the impugned order granting pre-arrest bail to opposite party no. 1, Arnab Ghosh.

He is directed to surrender before the learned CJM, Howrah within seven days from days and upon his surrender his prayer for regular bail shall be considered independently and in accordance with law. In the event he fails to do so, investigating agency as well as court below shall issue appropriate processes for his apprehension in accordance with law.

We hasten to add that the observations made by us are for the purpose of disposal of this application and shall not have any bearing in the subsequent stages of the proceeding which needless to mention shall be adjudicated independently and in accordance with law.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)