

29.11.2022
Sl. No.43
akd

C. R. M. (DB) 1386 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 17.05.2022 :

A N D

In Re : Jagabandhu Pramanick

..... Petitioner

Mr. Monish Sen
Ms. Oisani Mukherjee

... .. for the petitioner

Mr. Sourav Chatterjee
Mr. Kunal Ganguly

... .. for opposite party nos. 2 to 5

Mr. P. K. Datta
Mr. S. Ray

... .. for the State

A piquant situation is brought to our notice in this application for cancellation of bail.

On 21.04.2022 opposite party no.5 herein surrendered before the learned Additional Chief Judicial Magistrate-in-charge. His surrender was accepted and he was remanded to judicial custody till 05.05.2022. Subsequently, he withdrew his bail application. But the learned Magistrate released him from judicial custody and allowed him to leave the court scot-free. Thereafter, on a number of dates, similar applications for surrender were filed and withdrawn. Finally, on 29.04.2022 opposite party no.5 again surrendered and prayed for bail. State did not oppose his bail prayer and he was released on bail.

Subsequently, opposite party nos.2 to 4 were enlarged on bail vide order dated 30.04.2022.

Learned advocate appearing for the petitioner submits once opposite party no.5 had been taken into judicial custody on 21.04.2022, learned Magistrate-in-charge acted illegally in permitting him to go scot-

free. Without considering the aforesaid conduct, his bail was granted. Bail was also granted to opposite party nos.2 to 4 herein on principles of parity. Hence, the orders are liable to be set aside.

Learned advocate appearing for the opposite party nos.2 to 5 herein submits that the offences are triable by a Magistrate. Allegations revolve around a forged deed which was seized. Hence, investigation is complete. Accordingly, opposite party nos.2 to 5 were enlarged on bail.

Learned advocate appearing for the State produces the case diary.

Once an accused has surrendered before the Magistrate and has been taken into custody, it is not within the domain of the Magistrate to release him without execution of a bail bond. On 21.04.2022 opposite party no.5 surrendered before the Magistrate and was taken into judicial custody. For reasons best known to the said accused, he did not press his bail application. Under such circumstances, only option available to the Magistrate was to remand the said accused to judicial custody. In a clear misunderstanding of law, he allowed the accused to go scot-free. Subsequently, the said accused on repeated occasions made applications for surrender but withdrew them. Finally, on 29.04.2022 he again surrendered and was released on bail. This conduct of the opposite party no.5-accused clearly shows a desperate effort at forum shopping to ensure his release on bail.

On earlier occasions the court of learned Additional Chief Judicial Magistrate was manned by a different judicial officer. Hence, opposite party no.5 withdrew his applications for surrender and finally appeared and prayed for bail upon change of judicial personnel. His conduct was inadvertently aided by the incorrect understanding of law

by the earlier judicial officer who permitted him to go scot-free notwithstanding his withdrawal of bail application.

In view of the aforesaid conduct of the opposite party no.5, we are of the opinion he had procured the order of bail through sharp practice and the same is liable to be set aside on this score.

However, with regard to the other accused persons i.e. opposite party nos.2 to 4 herein, we find that the said accused persons had not resorted to similar sharp practice.

Learned advocate for the petitioner submits bail prayer of opposite party nos.2 to 4 herein was granted on parity with opposite party no.5. Hence, the same ought to be cancelled.

We are not persuaded to do so. Allegation in the instant case revolves around forgery of a document which is in the custody of the Investigating Agency. Detention of the accused persons is not necessary for the purpose of investigation. Unlike opposite party no.5, opposite party nos.2 to 4 did not resort to any sharp practice. Hence, on their own merits, their bail orders are justified and need not be cancelled.

In view of the aforesaid discussion, we set aside the order granting bail to opposite party no.5.

Accordingly, order dated 29.04.2022 granting bail to opposite party no.5 herein is set aside.

Opposite party no. 5 is directed to surrender before the court below within seven days from date failing which the Investigating Agency as well as the court below shall be at liberty to resort to appropriate processes for his apprehension in accordance with law.

CRM (DB) 1386 of 2022 is thus disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

