

27.01.2022

Serial no. 14

Srimanta

Ct. No. 42

(Through Video Conference)
CRM 4414 of 2021

In Re : An application for cancellation of bail under Section **439(2)** of the Code of Criminal Procedure, 1973 against the order dated 27.11.2020 passed by the Learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South) in connection with **Anandapur** Police Station Case No. **21** of **2019** dated **31.01.2019** under Section **408** of the Indian Penal Code (corresponding to **A.C.G.R. No. 410/2019**).

In the matter of : **Anupam Das**

... **Petitioner.**

Mr. Moyukh Mukherjee, Adv.,

...for the petitioner.

Mr. Madhusudan Sur, Adv.,

Mr. Dipankar Pramanick, Adv.,

...for the State.

Mr. Malay Bhattacharyya, Adv.,

Mr. Subhrajyoti Ghosh, Adv.

...for the opposite party no. 2.

This is an application under Section 439(2) of the Code of Criminal Procedure filed by the *de facto* complainant/petitioner praying for cancellation of bail of the accused/opposite party which was granted by the learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South) vide order dated 27th November, 2020.

It is submitted by Mr. Moyukh Mukherjee, learned advocate for the petitioner that Anandapur Police Station Case No. 21 of 2019 dated 31.01.2019 under Section 408 of the Indian Penal Code was registered on the basis of a written complaint submitted by the petitioner to the effect that the

opposite party no. 1 committed criminal breach of trust and misappropriated a sum of Rs.46,36,406/- belonging to the informant. Mr. Mukherjee next draws my attention that during investigation of the case the Investigating Officer could not apprehend the accused. The accused filed two applications for anticipatory bail before the learned Sessions Judge at Alipore and vide order dated 21st October, 2019 and 14th January, 2020 both the applications were rejected for non-prosecution due to the absence of the learned advocate for the accused/opposite party. Warrant of arrest was issued against the accused on 1st July, 2020.

It is also pointed out by Mr. Mukherjee that police submitted charge-sheet against the accused showing him absconder on 16th May, 2020. Only then warrant of arrest was issued against the accused.

During pendency of the warrant of arrest and after getting the petitions for anticipatory bail rejected for non-prosecution, the accused voluntarily surrendered before the learned Additional Chief Judicial Magistrate, Alipore on 27th November, 2020.

The learned Magistrate without considering the previous conduct of the accused granted bail to him and recalled W.A.

The present petition is for cancellation of the order of bail dated 27.11.2020.

In support of his submission, Mr. Mukherjee refers to a decision of the Hon'ble Supreme Court in ***Kanwar Singh***

Meena –Vs.- State of Rajasthan & Anr. reported in **(2012) 12 SCC 180**. In paragraph 10 of the said report the principles applicable for cancellation of bail are laid down by the Hon'ble Supreme Court in the following words:-

"While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution

case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail”.

It is submitted by Mr. Mukherjee that the High Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. Coming to the instant case, it is submitted by him that the respondent could not be apprehended by the Investigating Officer. Therefore, the Investigating Officer could not take any step for seizure of the misappropriated money. On the prayer of the Investigating Officer, warrant of arrest was issued against the accused by the learned Additional Chief Judicial Magistrate, Alipore. The learned Additional Chief Judicial Magistrate did not wait for execution of warrant of arrest. On the contrary, on a date when the case was not fixed for hearing, it was taken up on the basis of a put up petition by the learned Additional Chief Judicial Magistrate, Alipore and bail was granted to him. The impugned order *per se* is illegal and accordingly, it ought to be cancelled.

Mr. Malay Bhattacharyya, learned advocate for the accused/opposite party, on the other hand, refers to an unreported decision of the Hon’ble Supreme Court in ***Myakala Dharmarajam & Ors. Etc. –Vs.- The State of Telangana & Anr. (Criminal Appeal Nos. 1974-1975 of 2019, decided on 7th January, 2020)***. In the above case, the Hon’ble

Supreme Court relying on the ratio laid down in ***Raghubir Singh –Vs.- State of Bihar*** reported in **(1986) 4 SCC 481**

made out the following guidelines where bail can be cancelled: -

*"In **Raghubir Singh –Vs.- State of Bihar** this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence of witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence, it must not be lightly resorted to".*

It is submitted by Mr. Bhattacharyya that the accused did not interfere with the investigation; he never attempted to tamper with the evidence or witnesses he never threatened the witnesses. There is no record that he fled away from another country. There is also no record that he was unavailable to the Investigating agency and placed himself beyond the reach of the Investigating Officer. Therefore, bail of the accused cannot be cancelled.

It is found from the record that the Investigating Officer submitted charge-sheet against the accused showing him 'absconder'. The Investigating Officer could not apprehend him during investigation and he successfully went out of reach of the Investigating Officer. He bought time of investigation by filing successive applications for anticipatory bail and getting them dismissed for non-prosecution. Taking the opportunity of filing of charge-sheet, he surrendered before the learned Magistrate and the learned Additional Chief Judicial Magistrate, Alipore without considering his pervious conduct in mechanical manner granted bail to the accused. On perusal of the order sheet dated 27.11.2020 in connection with Anandapur Police Station Case No. 21/2019 passed by the learned Additional Chief Judicial Magistrate, Alipore, this Court has every reason to presume that the impugned order was already prepared in the official computer of the learned Additional Chief Judicial Magistrate, Alipore. The second line of the order dated 27.11.2020 runs thus: -

"The accused above-named surrender(s). He/they is/are taken into custody".

If the bail petition is taken up for hearing and the order was dictated by the learned Additional Chief Judicial Magistrate, Alipore after hearing the case the second line of the order ought not to have been recorded in such a manner. It appears that the learned Additional Chief Judicial Magistrate did not find to strike off the irrelevant words like 'they, are' etc. The latter

part of the order reveals some blank spaces in order to write down the name of the surety. Therefore, this Court has every reason to hold that similar type of order are prepared in the computer of the Additional Chief Judicial Magistrate, Alipore and only signatures are put and blanks are filled up without going through the facts and circumstances of each case. This practice was criticized by this Court in number of reported decisions.

For the reasons stated above, the order of bail dated 27.11.2020 granted in favour of the accused/opposite party is **cancelled.**

A copy of this order be sent to the learned Sessions Judge, South 24-Parganas at Alipore with a request to hold an enquiry to ascertain as to whether the order dated 27.11.2020 in connection with Anandapur Police Station Case No. 21/2019 was a stereo type order brought from the official computer/laptop of the learned Additional Chief Judicial Magistrate and submit a report within 15 days from the date of receipt of the copy of the order.

The instant criminal motion is, thus, **disposed of.**

(Bibek Chaudhuri, J.)