

25.07. 2022
item No.17
n.b.
ct. no. 34

CRM(SB) 119 of 2022

In Re: An application for Cancellation of bail under Section 439(2) of the Code of Criminal Procedure in connection with G. R. No.1072 of 2022 arising out of Islampur Police Station Case No.147 of 2022 dated 13.4.2022 under Section 420/120B of Indian Penal Code, 1860 read with 63/65 of the Copy Right Act 1957.

And

In Re: **State of West Bengal.**

.....petitioner.

Ms. Mauryukh Mukherjee,
Mr. A. Mitra,
.....for the Defacto Complainant

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta,
.....for the State

Md. G. N. Imrohi,
Mr. Debapriya Majumder
... for the opposite party.

State approached this Court for cancelling the bail order dated April 14, 2022 in connection with Islampur Police Station case No.147 of 2022 dated 13.4.2022 under Section 420/120B of the Indian Penal Code, 1860 read with 63/65 of the Copy Right Act 1957.

Mr. Roychoudhury, learned advocate appearing for the petitioner/State submits that the observations of the Learned Trial Court that since Section 41A of the Code of Criminal Procedure was not complied with and the accused has been arrested and as such he is entitled to the order of bail is against spirit of the judgment. In an appropriate case, the

Investigating authority may decide to issue notice under Section 41A of the Code of Criminal Procedure but there may be cases where search and seizure is immediately required even prior to Section 41 A of the Code of Criminal Procedure and it is only after search and seizure or recovery the Investigating Authority have to take a prompt decision whether to arrest an accused or not. The whole prerogative is with the Investigating Agency at the stage of investigation of the case.

Mr. Majumder, learned advocate appearing for the accused/opposite party submits that pursuant to the order of bail being granted the accused persons had been diligently complying with the same and there has been no allegation from any corner that they have misused the liberty granted to them.

Mr. Mukherjee, learned advocate appearing for the de facto complainant submits that the order of the Learned Additional Chief Judicial Magistrate, Lalbagh, Murshidabad suffers from gross illegality as the merits of the matter was not taken into consideration and the Learned Court on technical issues allowed the prayer of bail.

I have taken into consideration the submissions advanced by each of the parties and perused the order dated 14.04.2022, the learned Court while granting bail took into account non-compliance of Section 41A of the Code of Criminal Procedure and based the foundation on Section 41A for grant of bail. I am of the opinion that the Learned Magistrate should have considered the merits of the case. There is a fault on the part of the Investigating Officer for not issuing Section 41A for

that there may be separate steps to be taken, but a criminal case is to be independently considered on the anvil whether the custodial detention of the accused is required or not, and it is for the Court to take such a decision. Accordingly, I modify the bail granted on 14.04.2022 to the extent that such bail will be valid till August 31, 2022.

All the parties are present before this Court. They are directed to be present on August 18, 2022. Learned ACJM will hear out the facts of the case on merits. Sufficient opportunity is to be given to each of the parties to place their case and thereafter decide whether the petitioner should be released on bail or his custodial detention is necessary for the sake of investigation of the case.

Needless to state that this Court has not expressed any opinion whether to grant bail or not to grant bail, it is exclusive jurisdiction and discretion of the Learned Magistrate. The Court only interfered in respect of the issue that no facts are discussed in the order regarding the purpose for which the petitioner is granted bail in the background of the facts emerging and the prayer advanced by the Investigating officer of the case.

With the aforesaid observation, CRM(SB) 119 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 supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)