

16.06.2022
saswata
ct 28
sl no. 133

C.R.M. (A) 2768 of 2022

In Re : An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Suti P.S. case no. 416/2021 dated 13.10.2021 under sections 341/423/307/354/34 of the Indian Penal Code and subsequently added Section 302 of the Indian Penal Code.

And

In Re : Muktar Hossain @ Moktar Hossain & Ors.
..... petitioners

Mr. Ayan Bhattacharjee
Mr. Kunal Ganguly
..... for the petitioners

Mr. Rudradipta Nandy, APP
Ms. Eshita Dutta
..... for the State

Mr. Krishnendu Bhattacharya
Mr. Priyankar Ganguly
Ms. Shalini Bairagi
..... for the de facto

Petitioners have approached this Court seeking pre-arrest bail. Learned advocate for the petitioners contends they were granted anticipatory bail in the present case. Subsequently, the victim died and Section 302 of the IPC was added to the array of offences. In view of the decision rendered in the case of **Pradeep Ram –vs- State of Jharkhand & Another¹**, the Sessions Judge cancelled the order of anticipatory bail. The order has been assailed in revision which is pending before this Court. At this stage, the petitioners have sought for pre arrest bail.

Learned APP opposes the prayer for bail.

Learned lawyer for the de facto complainant also opposes such prayer. He submits the petitioners had appeared before the Court below and were released on regular bail which has been cancelled. Hence, they are not entitled to seek pre arrest bail. In support, he relies **Manish Jain –vs- Haryana State Pollution Control Board²**.

¹ (2019) 17 SCC 326

² (2020) 20 SCC 123

We have considered the materials on record. The petitioners were released earlier on anticipatory bail. Subsequently, the victim died and a graver offence, namely, murder was added to the FIR. In such a situation, steps that may be resolved by the prosecution or accused have been succinctly enumerated ***Pradeep Ram (supra)***.

“ 31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3. The court, in exercise of power under section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of canceling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail.”

In the present case, in spite of addition of graver offence, petitioners failed and/or neglected to appear and apply for bail afresh. In terms of paragraph 31.2 and 31.3 (supra), de facto complainant prayed for cancellation of their bail. Learned Sessions Judge by order dated 31.03.2022 cancelled bail of the petitioners as they had failed to appear and apply for fresh bail after addition of the graver charge. We do not find any illegality in the said order. Since, the petitioners were on regular bail which came to be cancelled, there is no scope of them seeking pre arrest bail.

In this regard, one may profitably refer to ***Manish Jain –vs- Haryana State Pollution Control Board*** (supra).

The ratio in ***Sumedh Singh -vs- State of Punjab & Another***³ is clearly distinguishable. In the said report, the accused was not on regular bail which had been cancelled. Under such circumstances, his application seeking anticipatory bail upon addition of graver charge was held permissible.

In light of the aforesaid discussion, we are of the opinion application for pre arrest bail is not maintainable and is dismissed.

At this stage, petitioners seek leave to surrender before the Sessions Court and apply for bail afresh in view of addition of the graver charge of murder.

The petitioners are given liberty to surrender before the Sessions Judge within 7 days from date and apply for bail. In the event, they surrender before the learned Judge within the stipulated time, the Court shall consider the prayer for bail in accordance with law and take appropriate decision thereon in light of the addition of the graver charge and other attending circumstances positively within 7 days thereof. Till such decision is taken, order of the Sessions Judge cancelling bail of the petitioners shall remain suspended.

Needless to mention, this is an ad hoc arrangement and will not create equity in favour of either of the parties.

If the petitioners fail to surrender within the time stipulated, order cancelling their bail shall stand revived and they shall be forthwith taken into custody.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)

³ 2020 (13) SCALE