

44 03.08.2022
(AD)

Court No.29

C.R.M. 5066 of 2019

In Re: - An application under Section 439(2) of the Code of Criminal Procedure, 1973.

And

In the matter of: - Sambhu Naskar

...petitioner.

Mr. Debajyoti Deb

... for the petitioner.

Mr. Narayan Prasad Agarwala

Mr. Pratick Bose

... for the State.

Mr. Sandipan Ganguly, Ld. Sr. Advocate

Mr. Angshuman Chakraborty

Mr. Shasanka Shekhar Saha

... for the opposite party no.2.

Petitioner seeks cancellation of anticipatory bail granted by the learned Sessions Judge, South 24 Parganas, Alipore, by the Order No.02 dated June 5, 2019 passed in Criminal Misc Case No.3173 of 2019.

Learned Advocate appearing for the petitioner draws the attention of the Court to the contents of the order granting anticipatory bail. He contends that the order is perverse. Learned Judge did not take into consideration the statements recorded under Section 164 of the Code of Criminal Procedure available in the case diary as on the date of passing of such order while granting anticipatory bail to the private opposite party.

Learned Advocate appearing for the petitioner submits that subsequent to the grant of the anticipatory bail, at least four more criminal cases were initiated as against the private opposite party. He refers to page 6 of the affidavit-in-reply where those four police

cases are tabulated. He submits that, the State will be in a better position to assist the Court whether more police cases are pending as against the private opposite party or not.

Learned Advocate appearing for the petitioner submits that the order dated June 5, 2019 records that other co-accuseds were on bail. Such recording is erroneous. At least three co-accuseds were in custody at that material point of time. Referring to the order granting the anticipatory bail, learned Advocate appearing for the petitioner submits that the learned Judge did not prescribe any condition for the private opposite party to comply with.

State and the private opposite party are represented.

In reply to the query of the Court, learned Advocate appearing for the State draws the attention of the Court to the statements of eye-witnesses recorded under Section 164 of the Code of Criminal Procedure in the case diary. He submits that one of such 164 statement was recorded on March 12, 2019.

Learned Senior Advocate appearing for the private opposite party submits that his client is not guilty of post-bail misconduct subsequent to the order *vis-à-vis* the petitioner. The private opposite party is on bail on the police cases referred to in the affidavit-in-reply. He refers to the contents of the order dated June 5, 2019. He submits that, the learned Judge records that the learned Judge perused the materials in the case diary as also the records of the case. He contends that, in the event the Court is pleased to cancel the anticipatory bail granted, then the Court should remand the matter for the purpose of reconsideration by the learned Judge and grant interim protection to the private

opposite party in the meantime.

Learned Senior Advocate appearing for the private opposite party contends that the private opposite party was not named in the First Information Report that his client was sought to be roped into the investigations subsequently. He refers to the delay in the recording of the statements under Section 164 of the Code of Criminal Procedure.

The anticipatory bail was granted to the private opposite party by the learned Sessions Judge on June 5, 2019 in respect of a police case involving the provisions, *inter alia*, of Sections 302/34 of the Indian Penal Code, 1860.

The learned Judge observed in the impugned order that he perused the materials in the record and the case diary, and that he perused the statements taken under Section 161 of the Code of Criminal Procedure.

The case diary contains statements recorded under Section 164 of the Code of Criminal Procedure. Such statements were recorded much prior to the impugned order.

Apparently, the learned Judge did not take such statements under Section 164 of the code of Criminal Procedure into consideration while granting anticipatory bail to the private opposite party.

The records demonstrate that at least three co-accuseds were in custody as on the date of passing of the impugned order. Such fact was also not taken into consideration as, *prima facie*, appearing from the impugned order by the learned Judge.

Perversity of the impugned order is one of the grounds for

setting aside an order granting anticipatory bail.

In the facts of the present case, therefore, we set aside the anticipatory bail granted to the private opposite party by the order dated June 5, 2019 and all consequential steps taken thereon.

The application for cancellation is pending for a considerable period of time. We, therefore, grant liberty to the private opposite party to apply afresh before the jurisdictional Court for anticipatory bail, if so advised, within a period of fortnight from date. Till such time, the police will not take any coercive measure as against the private opposite party.

C.R.M. 5066 of 2019 is disposed of accordingly.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)