

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRM 5344 of 2021

Jayanti Mali

VS.

Rahul Pradhan & Ors.

For the petitioner : Mr. Amitabha Karmakar
Mr. Arup Kumar Bhowmick, Advocates

For the private opposite parties: Mr. Suman De, Advocate

For the State : Mr. P. K. Datta, Id. APP
Mr. Santanu Deb Roy, Advocates

Judgment on : **April 07, 2022**

DEBANGSU BASAK, J.:-

1. Petitioner seeks cancellation of the order granting bail to private opposite parties on March 17, 2021 and March 29, 2021.

2. Learned advocate appearing for the petitioner submits that in respect of a police case which involves an allegation of murder, against private opposite parties, the learned Magistrate proceeded to grant bail to the opposite party no. 1 on the ground that he was appearing in the Higher Secondary Examination. Thereafter, the learned Magistrate enlarged two other private opposite parties being opposite party nos. 2 and 3 on the ground that one co-accused namely, Rahul Pradhan, was on bail. Therefore, he proceeded to grant bail to the opposite party nos. 2 and 3. He submits that the learned Magistrate did not record any reason for granting bail to the opposite party nos. 2 and 3 on March 29, 2021. Therefore, such order is bad in law.

3. State and private opposite parties are represented.

4. Learned advocate appearing for the private opposite parties submits that the police filed charge sheet in which, the police did not name the private opposite party no. 1 as an accused.

5. In view of police filing the charge sheet without arranging the private opposite party no. 1 as an accused

therein, the application for cancellation of bail so far as the opposite party no. 1 is concerned, is dismissed as against him.

6. So far as the private opposite party nos. 2 and 3 are concerned, it appears from the case records that the learned Magistrate proceeded to grant bail to them on March 29, 2021 solely on the consideration that the Rahul Pradhan was enlarged on bail. No other reason was recorded while granting bail.

7. Learned Advocate for the private opposite parties relies upon ***Prahlad Singh Bhati vs. NCT, Delhi & Anr.*** reported in **2001 SCC (Cri) 674** and submits that, in given circumstances, the learned Magistrate can grant bail in respect of offences which are triable by the Session Court. He contends that it was the error on the part of the learned Magistrate in not assigning any reason in the order dated March 29, 2021. Therefore, the private opposite party nos. 2 and 3 should not be faulted for the failure of the learned Magistrate in providing reasons while granting bail.

8. *Prahlad Singh Bhati (supra)* is of the following view :-

“6. Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of Session yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Session for the purposes of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case where the Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail.

7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the

jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

8. *The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”*

9. In the facts of the present case, the Learned Magistrate proceeded to grant bail to the private opposite party

nos. 2 and 3 solely on the ground that the private opposite party no. 1 was enlarged on bail on March 17, 2021. The order dated March 29, 2021 enlarging the private opposite party nos. 2 and 3 on bail cannot be said to be a non-speaking order. It does contain reasons. The reason is the enlargement of the other co-accused, i.e., opposite party no. 1 on bail by the order dated March 17, 2021. However, the reason for granting bail to the private opposite party nos. 2 and 3 does not withstand the test laid down under Section 437 of the Criminal Procedure Code. It falls short of the test laid down in ***Prahlad Singh Bhati (supra)***. ***Prahlad Singh Bhati (supra)*** requires a Magistrate embarking upon the journey of granting bail to an accused in a Sessions triable case, to specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life. If such finding is not returned he shall be deemed to be acting without jurisdiction while granting bail.

10. The learned Magistrate while granting bail to the private opposite party Nos. 2 and 3 did not return requisite

finding to assume jurisdiction. Consequently, the learned Magistrate is deemed to be acting without jurisdiction while passing the order for bail in March 29, 2021.

11. Consequently, we cancel the bail granted in favour of the private opposite party nos. 2 and 3 by the order dated March 29, 2021 of the learned Magistrate. We direct the opposite party Nos. 2 and 3 to surrender within seven days.

12. CRM 5344 of 2021 is, accordingly, **disposed of.**

(Debangsu Basak,J.)

13. I agree.

(Bibhas Ranjan De, J.)

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