

12.07.2022

Serial no.63

Dd

CRM (DB) 2072 of 2022

In re : An Application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail.

-And-

In the matter of : Partha Pratim Singha @ Partha Singha

... ...Petitioner

Mr. Soumyajit Das Mahapatra,
Mr. Ali Ahsan Alamgir,
Ms. Rabia Khatoon, Advocates
... ... For the Petitioner

Mr. Prasun Kr. Dutta, Id. APP
Mr. Subrato Roy, Advocates
... ...For the State

Mr. Arnab Chatterjee,
Mr. Jishan Iqubal Hossain, Advocates
... ...For the private Opposite party no. 2

Petitioner seeks cancellation of the order of anticipatory bail dated January 28, 2022 in CRM (A) 195 of 2022 in favour of private opposite party.

Learned advocate appearing for the petitioner submits that the private opposite party is in the habit of defalcating money from the employer leaving such employment and defalcating the subsequent employer. In support of such contention, he relies upon an order of dismissal passed by the Disciplinary Authority of LIC dated August 30, 2016 where the private opposite party was employed with. He submits that the private opposite party was found to defalcate money

belonging to the LICI and, therefore, his services were terminated.

Learned advocate appearing for the petitioner relies upon **(2001) 6 SCC 338 [Puran vs. Rambilas & Anr.]** and submits that the High Court should cancel the anticipatory bail granted in favour of the private opposite party on the ground that there are new materials implicating the private opposite party in the offences alleged.

Learned advocate appearing for the petitioner draws the attention of the Court to the order dated January 28, 2022 itself. He submits that, the Court could enquire from the learned advocate appearing for the State with regard to whether or not the police receive any complaint from the LICI as against the private opposite party. The order records that the police were yet to receive any complaint from the LICI.

Learned advocate appearing for the State submits that there is no material change in situation. The police did not receive any complaint from the LICI till date.

Learned advocate appearing for the private opposite party submits that the LICI never lodged any criminal complaint as against the private opposite party with the police in relation to the incident culminating into the order of dismissal dated August 30, 2016. In reply to a query of the Court, learned advocate appearing for the private opposite party submits, his client did not prefer any appeal against the order of dismissal dated August 30, 2016 passed by the Disciplinary Authority of the LICI.

The Supreme Court in **Puran** (supra) considered a appeal against an order by which, the High Court cancelled a bail granted earlier. It observed as follows :-

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is

made clear by this Court in Gurcharan Singh v. State (Delhi Admn.). In that case the Court observed as under :

"If, however, a Court of Session had admitted person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court."

12. *It must be mentioned that in support of the above submission Mr. Lalit had also relied upon the authorities in the cases of Subhendu Mishra v. Subrat Kumar Mishra, State (Delhi Admn.) V. Sanjay Gandhi and Bhagirathsinh v. State of Gujarat. These need not be dealt with separately as they are of no assistance in a case of this nature where bail has been cancelled for very cogent and correct reasons.*

13. *Our view is supported by the principles laid down in the case of Gurcharan Singh v. State (Delhi Admn.). In this case it has been held by this Court that under Section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere."*

The involvement of the private opposite party with the LICI was disclosed in the order granting anticipatory bail to the private opposite party on January 28, 2022. Learned advocate appearing for the petitioner raised such issue. A query was put to the learned advocate for the State with regard to the LICI issue.

The case diary does not support the contention of the petitioner that there was a police complaint as against the

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private opposite party with regard to LICI defalcation incident. The private opposite party suffered an order of dismissal issued by the Disciplinary Authority of LICI on August 30, 2016. As on date, we are yet to come across a police complaint relating to such incident as against the private opposite party. The LICI incident, therefore, at this stage, did not lead to a police complaint being lodged as against the private opposite party.

Therefore, we are of the view that there is no new material in the case diary for us to revisit our order granting anticipatory bail to the private opposite party on January 28, 2022.

In such circumstances, we find no merit in the present application.

CRM (DB) 2072 of 2022 is, therefore, **dismissed**.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)