

08.02.2022

Item No.4

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Ct.42

(Via Video Conference)

CRM 5979 of 2021

In Re. An application for cancellation of bail under
Section 439(2) of the Code of Criminal Procedure.

And

Priyanka Karmakar

Vs.

The State of West Bengal & Anr.

Mr. Apalak Basu

Mr. Nazir Ahmed

Ms. Pritha Bhaumik Basu

...for the petitioner

Ms. Anasuya Sinha

Mr. Pinak Kumar Mitra

...for the State

Ms. Tanuka Basu

Mr. Aparup Chatterjee

...for the opposite party

This is an application under Section 439(2) of the
Code of Criminal Procedure for cancellation of bail granted
in favour of the opposite party No.2 by the learned
Additional Chief Judicial Magistrate, Alipore on 25th August,
2021 in connection with Regent Park Police Station Case
No.86 of 2021 dated 13th May, 2021 under Sections
323/341/354/354A/354B/354C/354D/384/506 of the
Indian Penal Code read with Section 66E /67/67A of the
Information Technology Act.

On 12th May, 2021 the de facto complainant lodged a complaint before the Officer-in-Charge, Regent Park Police Station alleging, inter alia, that sometimes in the year 2012 she met the opposite party No.2 in her tuition class. Gradually a relationship was established between the de facto complainant and the opposite party. however, with the passage of time the de facto complainant found that the opposite party No.2 was trying to control her life and he was overpossessing and ill tempered. The opposite party No.2 used to monitor her mobile phone. He did not allow her to go outside of her house, mix up with other people and even wear clothes according to her own choice. He also insisted her to convert her religion to the faith of the opposite party No.2. The de facto complainant mutely bore all sorts of tortures inflicted upon her by the opposite party No.2 for the sake of their relationship. Subsequently, she understood that the opposite party No.2 is not the person of her choice and tried to break up said relationship. At this the opposite party No.2 became furious. He took some private pictures and videos of the de facto complainant in his mobiles and laptop and started blackmailing her on the threat that he would make such pictures viral in social sites. He also sent some private pictures of the de facto complainant to her elder sister and younger brother-in-law. He also extorted considerable amount of money from the bank account of the de facto complainant threatening her to upload her pictures

in social network sites. On 29th April, 2021 during Covid Pandemic, her office boss dropped her in front of her house. The opposite party No.2 followed them and threatened the office boss namely Gaurav Banerjee and the de facto complainant with dire consequences. On the basis of the said complaint police registered Regent Park Police Station Case No.86 of 2021 dated 13th May, 2021 and took up the case for investigation. During investigation the de facto complainant submitted the call list and chat between her and the opposite party to the Investigating Officer. She also handed over the bank statements to show payment of money to the de facto complainant. The statement of the de facto complainant was recorded under Section 164 of the Code of Criminal Procedure. During investigation of the case on 25th August, 2021 the record of Regent Park Police Station No.86 of 2021 dated 13th May, 2021 was put up on the basis of an application filed by the opposite party No.2 before the learned Additional Chief Judicial Magistrate, Alipore. The opposite party No.2 surrendered before the learned Additional Chief Judicial Magistrate and he was granted bail on the ground that he complied with the notice under Section 41 A of the Code of Criminal Procedure and custodial interrogation is not required for the purpose of investigation.

The said order passed by the learned Additional Chief Judicial Magistrate at Alipore is under challenge in the

instant proceeding at the instance of the de facto complainant. It is submitted on behalf of the informant that the learned Magistrate failed to appreciate the conditions for granting bail to an accused. Therefore, his prayer for bail ought to be rejected. It is submitted by the learned advocate for the petitioner that the learned Additional Chief Judicial Magistrate, Alipore did not even consider the gravity and seriousness of the offence. He did not even consider that in order to unearth the truth the Investigating Officer required to seize the mobile phone, SIM card and the lap top of the opposite party No.2. He did not go through the case diary. He also did not give opportunity to the learned Public Prosecutor to take part in the hearing of the application for bail under Section 437 of the Code of Criminal Procedure. Therefore, the learned Magistrate has violated all canons of procedure and granted bail to the opposite party No.2 without assigning any reason. It is submitted by the learned advocate for the petitioner that if an order of bail is passed on consideration of irrelevant circumstances without considering the relevant matters, such order of bail is liable to be cancelled.

Ms. Anasuya Sinha, learned advocate for the State submits without any unequivocal term that the order of bail passed by the learned Additional Chief Judicial Magistrate not only suffers from infirmity and material irregularity but also illegal per se. Compliance of the notice under Section

41A of the Code of Criminal Procedure cannot be held to be a ground for granting bail.

Learned advocate for the opposite party No.2, on the other hand, submits that the opposite party No.2 appeared before the Investigating Officer in compliance of the notice under Section 41A of the Code of Criminal Procedure. He was duly interrogated and examined by the Investigating Officer. The Investigating Officer seized one mobile phone from the possession of the opposite party No.2 and sent the same for scientific examination.

It is further submitted by the learned advocate for the opposite party No.2 that he is a business man. When he was in relationship with the petitioner, he gave financial loan to the elder sister of the petitioner and other relations. So, the de facto complainant paid her money for repayment of such loan amount. The accused never extorted the petitioner as alleged.

The learned advocate for the opposite party No.2 refers to an order passed by a Co-ordinate Bench on 10th December, 2021 in CRM 9457 of 2020 being a proceeding under Section 439(2) of the Code of Criminal Procedure. It is submitted by the learned advocate for the opposite party No.2 that in view of the above order passed by a Co-ordinate Bench the order of bail granted by the learned Additional Chief Judicial Magistrate can at best be modified treating the same as interim bail. In the meantime, the Additional

Chief Judicial Magistrate, Alipore may be directed to fix a date for production of the case diary and thereafter dispose of the application for bail after hearing the parties and the learned Public Prosecutor.

Having heard the learned Counsels for the petitioner and the opposite parties and having due regard to the factual aspects of the case, this court is of the view that it is inconvenient to narrate the principles laid down by the Hon'ble Supreme Court for cancellation of bail.

In **Kanwar Singh Meena -vs- State of Rajasthan & Anr. (2012) 12 SCC 180**, it is held by the Hon'ble Supreme Court in paragraph 10 of the said report as hereunder:-

“While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence,

to flee from justice, etc. would not deter the Court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution 3 case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail”

The High Court has the power to cancel bail even in cases where the order of granting bail suffers from serious infirmities resulting in miscarriage of justice. In **Myakala Dharmarajam & Ors. vs. The State of Telengana & Anr. (Criminal Appeal Nos.1974-1975 of 2019, decided on 7th January, 2020)**, the Hon’ble Supreme Court relying on the ratio laid down in **Raghubir Singh vs. State of Bihar** reported in **(1986) 4 SCC 481** formulated the following guidelines where bail can be cancelled.

“In Raghubir Singh –Vs.- State of Bihar this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence of witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above

grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence, it must not be lightly resorted to”.

In **Kanawar Singh Meena** (supra) it is held by the Hon’ble Supreme Court that an order of bail may be cancelled if the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused. In the instant case the learned A.C.J.M, Alipore granted bail to the accused because he complied the notice under Section 41A of the Cr.P.C. This Court called for a report from the Officer-in-Charge of Regent Park P.S as to whether case diary was produced before the learned A.C.J.M, Alipore. The officer-in-charge, Regent Park P.S submitted a report stating, inter alia, that the learned A.C.J.M did not pass any order directing the investigating officer to produce the case diary, nor he called for the case diary at the time of hearing of the said application. It is needless to say that even in **Satender Kumar Antil vs. Central Bureau of Investigation & Anr. [Special Leave to Appeal (Crl) No.5191 of 2021]**, it is held by the Supreme Court that sole consideration of compliance of Section 41A of the Code of Criminal Procedure without

considering the case diary, and the memo of evidence of the case cannot be a ground for passing an order of bail.

The learned Advocate for the opposite party No.2 has placed his reliance to an order dated 10th December, 2021 passed in CRM No.9457 of 2020 (**Smt. Manishi Das vs. The State of West Bengal & Anr.**) and submitted that the impugned order of bail dated 25th August, 2021 may be converted to an ad-interim order of bail and the learned court below may be directed to hear out the application for bail filed by the accused under Section 437 of the Code of Criminal Procedure afresh on the basis of the materials available in the case diary.

I have carefully perused the case diary. In view of the specific complaint made by the defacto complainant and considering its nature and gravity, this Court is of the view that custodial interrogation of the accused/opposite party No.2 is absolutely necessary in order to unearth the truth behind the dispute between the parties. The allegation reveals that the accused not only tried to destroy the future prospect of the defacto complainant, he has already portrayed the defacto complainant as a woman of questionable character by uploading some intimate pictures in social networking sites. Considering such gravity of offence, I am inclined

to cancel the order of bail passed by the learned A.C.J.M, South 24 Parganas at Alipore.

The learned A.C.J.M, Alipore is directed to issue warrant of arrest against the accused immediately on receipt of the server copy of this order.

Before I part with, it apparently appears that the learned A.C.J.M, Alipore while passing the order dated 25th August, 2021 did not apply his mind and in a typed copy of the order, he filled up some gaps and passed the order. Even the said order is not signed by him securing the fact that it was dictated and corrected by him. It appears from the certified copy of the order that the order of acceptance of bail bond was also previously typed and the name of the surety was written by some persons other than the learned A.C.J.M, Alipore.

In **Sharmistha Chowdhury & Anr. Vs. The State of West Bengal & Ors.** reported in **2018 Cri LJ 359**, a Co-ordinate Bench of this Court placing reliance of Rule 183 of the Criminal Rules and Order observed:-

“35. I have noted with grave concern the practice of recording orders with the assistance of police personnel attached to the General Registrar section or otherwise is not only illegal but affects the independence of judiciary and the constitutional mandate of separation of judiciary from the executive. Rule 183 of Calcutta High Court Criminal

(Subordinate Courts) Rules, 1985 lays down the procedure for recording judicial orders which reads as follows:-

“R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, 15 others may be recorded under his direction by the Bench Clerk.”

36. Accordingly, I deem it necessary to pass the following directions in exercise my powers of superintendence for future guidance of the criminal courts:-

(a) Judges/Magistrates shall record orders strictly in terms of Rule 183 of the Criminal Rules and Orders (Sub-ordinate Court Rules), 1985.

(b) Alternatively, in view of the technological advancement and the availability of personal computers/laptops to the judicial personnel, they may also transcribe their orders on the computers and take a printout thereof and upon affixation of their signature thereto, the said hardcopy shall be treated as a valid transcription of the order passed by the said court.

(c) Under no circumstances, any judicial officer shall take assistance of any external agency

particularly police officers in the matter of recording and/or transcribing orders of the Court.

(d) Any breach of such duty shall invite departmental proceeding so far as the judicial personnel is concerned.”

The judgment was circulated through the Registrar General of this Court to all Judges/Magistrates for necessary compliance. In spite of such order being passed, it is unfortunate that the old practice of non application of mind is still writ large amongst the Officers of the Judicial Service (this Court consciously refrains from using the term “subordinate judiciary”, as this Court feels that the term “Judiciary” embraces the entire judiciary starting from Civil Judge (Junior Division)/Judicial Magistrate to the Hon’ble Supreme Court.

Let a copy of this order be sent to the learned District Judge, South 24 Parganas at Alipore through the learned Registrar General requesting her to obtain an explanation from the concerned officer as to why necessary step shall not be taken in terms of the judgment of this Court in **Sharmistha Chowdhury** (supra).

The instant application is thus disposed of.

(Bibek Chaudhuri, J.)