

09.02.2022

(Through Video Conference)

CRM 6148 of 2021

In the matter of : **Biswajit Das** ...Petitioner.

For the petitioner:

Mr. Shatarup Purakayastha, Adv.,
Mr. Hamidur Rahaman, Adv.

For the State:-

Mr. Binoy Kumar Panda, Adv.,
Mr. Sandip Chakraborty, Adv.

For the opposite party No.2.

Mr. Anindya Bose, Adv.,
Mr. Diptendu Mandal, Adv.,
Mr. Nikhil Kr. Gupta, Adv.

Canning P.S Case No.178 of 2020 was registered against private opposite party Nos.2 and 3 under Section 420/406 of the Indian Penal Code on the basis of a written complaint submitted by the defacto complainant/applicant of the instant application.

The allegation as revealed in the written complaint submitted by the defacto complainant is that the private opposite parties offered the defacto complainant to sale a piece of land in Mouza- Dighirpar, J.L No.121, LR Khatian No.2313, which he agreed to purchase at a total consideration amount of Rs.10,800,00/- . On 26th June, 2017 an agreement for sale was executed by and between the defacto complainant and private opposite parties and as part payment, the defacto complainant paid a sum of Rs.3,00,000/- issuing four cheques in favour of opposite parties. Subsequently, the defacto complainant expressed his readiness and willingness but the opposite parties avoided execution of sale deed. Thereafter, the defacto

complainant came to know that prior to execution of the agreement for sale with the defacto complainant, the opposite parties already sold out the said property to some other persons. Even after such sale, they executed agreement for sale with other persons and received earnest money from them. The defacto complainant demanded the earnest money from the opposite parties. They issued two cheques of Rs.1,50,000/- each but the said cheques were dishonoured on the ground of insufficient fund on 14th March, 2020. The defacto complainant subsequently issued an Advocate's notice to the opposite parties but they did not return the said amount.

After initiation of the Canning P.S Case No.178 of 2020 under Section 420 of the Indian Penal Code against the opposite parties they surrendered before the court to learned Magistrate on 24th August, 2020. On that date they were granted ad-interim bail on the ground that they have complied with the directions under Section 41A of the Code of Criminal Procedure and therefore their custodial detention was not necessary. The certified copy of the order shows that the ad-interim bail granted on 24th August, 2020 was extended on 7th September, 2020 and 7th November, 2020. In the mean time, on 29th September, 2020, charge-sheet was submitted. On 16th December, 2020 the learned Additional Chief Judicial Magistrate, Alipore confirmed the interim bail on the ground of submission of charge-sheet.

It is rightly submitted by the learned Advocate for the petitioner that at the time of granting bail as well as during the confirmation thereof, the learned A.C.J.M, Alipore did not consider the case diary. He did not assign any reason for granting interim bail excepting the reason that the accused persons/opposite party Nos.2 and 3 have complied with the notice under Section 41A of the Code of Criminal Procedure.

I have heard the learned Advocate for the petitioner and the opposite parties. The learned P.P-in-Charge has submitted a report confirming the fact that at the time of granting bail the learned Magistrate did not consider the case diary.

In **Satender Kumar Antil vs. Central Bureau of Investigation & Anr. in Special Leave to Appeal (Crl.) No(s). 5191 of 2021**, the Hon'ble Supreme Court issued the following guidelines:-

“After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

(b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

(c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

(d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may 3 be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.”

This Court has time and again directed that when an accused appears or surrenders before the learned Magistrate and the court is of the opinion that the custody is unwarranted in particular circumstances of the case, it would grant interim bail and fix a date calling for the case diary and it is only after perusal of the case diary, the court should confirm the interim bail. In both the circumstances, the court should give an audience to the public prosecutor. Sole consideration of compliance of Section 41A of Cr.P.C. without considering the case diary and the gravity of offence cannot be a ground for confirming the bail or passing a permanent order of bail. The court of the learned Magistrate are required to adhere to the guidelines set out by the Hon'ble Supreme Court strictly in its true letter and spirit.

Bail should be granted on perusal of the case diary on merit considering the gravity of offence. In the instant case, if it is found that the opposite parties cheated not only the defacto complainant but several other persons showing a particular piece of land for sale, they should be treated as habitual offenders and it is for the learned Magistrate to consider whether in such case he should grant bail or not.

Considering the guidelines of the Hon'ble Supreme Court in **Satender Kumar Antil** (supra) the order of bail granted on 16th December, 2020 is converted to interim bail. The learned A.C.J.M, Alipore is directed to call for the case dairy, memo of evidence and other materials in connection with the case and decide the application for bail filed by the opposite parties on merit.

The instant application under Section 439(2) of the Code of Criminal Procedure is disposed of with the above order.

(Bibek Chaudhuri, J.)