

24.02.2022

Sl. No. 03

Srimanta

Ct.No.42

CRM/6824/2021

(Via Video Conference)

In Re : An application for cancellation bail under Section **439(2)** of the Code of Criminal Procedure, 1973 in connection with **Golabari** Police Station Case No. **10/2021** under Sections **407/34** of the Indian Penal Code, 1860 (G.R. No. **131/2021**).

In the matter of : **Md. Irfan Alam**

...petitioner.

Mr. Daanish Haque, Adv.,
Mr. Siddhartha Deb Roy, Adv.,
Md. Zohaib Rauf, Adv.,
Mr. Abdul Zahid, Adv.

...for the petitioner.

Mr. Prasun Kumar Datta, A.P.P.,
Md. Kutub Uddin, Adv.

...for the State.

This is an application for cancellation of bail granted in favour of accused Md. Ahad who was granted bail on 20th January, 2021 by the Learned Chief Judicial Magistrate, Howrah.

In support of the application for cancellation of bail, it is submitted by the Learned Advocate for the appellant that the background of the case is that the *de facto* complainant had entered into an agreement with accused, Md. Saif Ahad for plying his vehicle on commercial basis. It was agreed by and between the parties that Md. Saif Ahad, the accused would drive the vehicle and in return would pay certain amount of money daily to the *de facto* complainant. It is the allegation that the accused paid money for few days and thereafter he

stopped payment of money. When the *de facto* complainant enquired about his vehicle it was learnt that the said vehicle was sold to some other person by the accused.

It is submitted by the Learned Advocate for the petitioner that the accused is FIR named. He was arrested by the Investigating Officer. On the prayer of the Investigating Officer he was taken to Police custody. But till date the car of the *de facto* complainant could not be recovered. On the date when the accused was produced before the Learned Chief Judicial Magistrate he granted bail on the ground that the detention of the accused in Police custody remained fruitless. It is submitted by the Learned Advocate for the petitioner that the Investigating Officer did not take any attempt to recover the stolen car. For this reason, the accused ought not to have been granted bail.

I have carefully perused the Case Diary. The allegation against the accused is that he failed to produce the car of the *de facto* complainant and it was sold away to some person. The Investigating Officer during investigation could not ascertain. The name and identity of the purchaser from the accused under whose control the car was given by the *de facto* complainant. On the basis of some purported statement under Section 161 of the Code of Criminal Procedure which are also hearsay in nature the Investigating Officer has submitted charge-sheet in the instant case. I am surprised to note as to how the charge-sheet can be filed in the instant case. There is a specific provision in the PRB that before filing of the charge-sheet opinion of the superior officer and the Public Prosecutor is required to be taken. I fail to understand whether any such opinion was taken by the Investigating Officer before filing charge-sheet or that the said provision of PRB becomes a forgotten provision. The Investigating Officer has not investigated into the case properly. The Case Diary

shows that it is absolutely a table work and a perfunctory charge-sheet was filed. The Investigating Officer also knows that the case will end in acquittal. In spite of such discrepancies, the investigating Officer has filed the instant charge-sheet.

However, for filing a faulty charge-sheet, liberty to the accused person of bail cannot be cancelled. The Learned Chief Judicial Magistrate found that Police custody of the accused remained fruitless. He heard the Learned Additional Public Prosecutor prior to granting bail to the accused who raised objection against the prayer for bail. But the Learned Chief Judicial Magistrate on his own wisdom found that no fruitful result would be achieved detaining the accused behind the bar. Therefore, the bail was granted.

While rejecting the application for cancellation of bail I am constrained to send the copy of this order sheet to the Commissioner, Howrah Police Commissionerate in taking necessary Departmental action against the Investigating Officer for submission of such type of perfunctory charge-sheet. The Officer-in-Charge, Golabari Police Station is directed not to assign any case disclosing cognizable offence for investigation to the concerned Investigating Officer. The Commissioner of Police, Howrah, Police Commissionerate is requested to submit a report within a fortnight stating the departmental action taken against the concerned Investigating Officer.

The *de facto* complainant is at liberty to pray before the Learned Chief Judicial Magistrate for further investigation of this case in accordance with the appropriate provisions of law.

Case Diary be returned.

The instant application is, thus, **disposed of**

Personal appearance of Officer-in-Charge, Golabari Police Station and the concerned Investigating Officer be dispensed with.

(Bibek Chaudhuri, J.)