

07.02.2022

Sl. 70

Court No.29

sourav

(Rejected)

C.R.M. 7229 of 2021

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

In the matter of: **Labani Roy**

....petitioner.

Mr. Avik Ghatak

Mr. Saibal Krishna Dasgupta

... for the petitioner.

Mr. Neguive Ahmed

Ms. Amita Gaur

...for the State.

Mr. Sabir Ahmed

Mr. Abul Kalam Azad

Mr. S. Sarkar

... for the private opposite party.

Supplementary affidavit filed in Court be taken on record.

Petitioner seeks cancellation of bail.

Learned Advocate appearing for the petitioner draws the attention of the Court to the statement made in the complaint to the police by the petitioner. He draws the attention of the Court to the fact that the order granting bail was passed by the learned Additional Chief Metropolitan Magistrate, Calcutta. He draws the attention of the Court to the provisions of Section 437 of the Criminal Procedure Code and submits that the learned Magistrate ought not to have granted the bail involving, *inter alia*, provisions of Section 376 of the Indian Penal Code. He relies upon **(2001) 4 Supreme Court Cases 280 (Prahlaad Singh Bhati vs. NCT, Delhi and Another)** in support of his contention.

That apart, he submits that the learned Magistrate found materials in the case diary to deny bail to the petitioner on September 9, 2021 and granted bail to the private opposite party on September 18, 2021.

State and the private opposite party are represented.

A complaint to the police was made by the petitioner which was registered as a First Information Report, *inter alia*, under Sections 376/417/377 of the Indian Penal Code. The police started investigations and took the private opposite party into custody. The petitioner recorded his statements under Section 164 of the Code of Criminal Procedure on September 18, 2021. The private opposite party applied for bail which was rejected by the learned Magistrate on September 9, 2021 on the ground that the investigation is in the initial stage and that there are specific allegations against the private opposite party. Considering the earlier stage of investigation and the materials in the case diary, the learned Magistrate rejected the prayer of bail of the private opposite party.

Subsequently, on September 18, 2021 the learned Magistrate considered the prayer for bail of the private opposite party. While considering the prayer for bail, the learned Magistrate took into consideration the statement of the petitioner recorded under Section 164 of the Code of Criminal Procedure. He took into consideration the medicolegal examination, the injury certificate and other materials in the case diary. He took note of the fact that the written complaint made by the petitioner resonates around a promise to marry between the petitioner and the private opposite party. He returned a finding, of course, *prima facie*, that the accused and the victim were known to each other since the year 2014. He took into account the nature of allegations of the petitioner that the private opposite party was guilty of carnal and anal intercourse with the

petitioner. He compared such allegations with the injury report and found that the injury report did not substantiate such allegations at that stage.

Consequently, he proceeded to grant bail to the private opposite party.

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 purpose 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 exclusive 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.”

It cannot be said that the order of the learned Magistrate dated September 18, 2021 is without jurisdiction. The order falls within the second proviso under Section 437 of the Criminal Procedure Code. The learned Magistrate discussed the gravity of the offence and the involvement of the private opposite party therein, the materials in the case diary and consequently on the basis of his prima facie finding granted bail to the private opposite party. Such order cannot be faulted.

In such circumstances, we find no ground to cancel the bail existing in favour of the private opposite party.

Accordingly, the prayer for cancellation of bail is rejected.

C.R.M. 6816 of 2021 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

