

25.01.2022
Item No.22
Ct. No.42

(via video conference)
CRM 7318 of 2021

Gopal Chandra Das
Vs.
The State of West Bengal & Ors.

Mr. Phiroze Edulji,
Mr. Somopriyo Chowdhury,
Ms. A. Chatterjee,
Ms. Samira Giriwal.

... for the petitioner

Mr. Bibaswar Bhattacharya,
Mr. Karan Bapuli.

... for the O.P No.2 & 3.

The instant application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure has been filed by the defacto complainant of Bowbazar P.S Case No.336 of 2020 dated 22.10.2020 under Sections 406/420/506/120B of the Indian Penal Code corresponding to GR Case No.978 of 2020 pending before the 12th Court of the Learned Metropolitan Magistrate at Kolkata.

The gist of the prosecution case is that, the defacto complainant gave a sum of Rs.10 lakhs by two cheques to the accused persons for development of their business. Subsequently, when he asked the accused persons to repay the same amount the defacto complainant was criminally intimidated. It is alleged that

the accused persons have misappropriated the said sum of Rs.10 lakhs and committed cheating upon the defacto complainant.

Mr. Phiroze Edulji, learned Advocate for the informant/petitioner submits that the FIR was produced before the learned Chief Metropolitan Magistrate, Kolkata on 22nd October, 2020. On 15th March, 2021 the accused persons surrendered before the Court of the learned Additional Chief Metropolitan Magistrate II, Kolkata. The learned Magistrate granted interim bail to the accused persons on the following grounds:-

“It appears to me that the accused persons had duly complied the notice U/s 41A of Cr.P.C., as served upon them in connection with this case and record shows that they met with the I/O and cooperated in the investigation. So, in my opinion, custodial interrogation of these accused persons is not required, but at the same time considering the preliminary stage of investigation of this case, I am inclined to enlarge them on interim bail with condition.”

Subsequently, the case record was transferred to the 12th Court of the learned Metropolitan Magistrate, Kolkata for trial and disposal. The learned Metropolitan Magistrate, 12th Court, Kolkata received charge-sheet against the accused persons on 22nd April, 2021 under Section 406/420/506/120B of the Indian Penal Code. By an order dated 22.07.2021 the learned Magistrate confirmed interim bail as charge-sheet was submitted.

It is pointed out by Mr. Phiroze Edulji that the Hon’ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of**

Investigation & Anr. in Special Leave to Appeal (CrI.) No(s).5191 of 2021 had formulated certain guidelines which the learned Magistrate should follow at the time of consideration of bail.

On due consideration of the guidelines laid down by the Supreme court in Satender Kumar Antil, a Coordinate Bench of this Court in CRM No.9457 of 2020 vide order dated 10th December, 2021 (**Smt. Manashi Das vs. The State of West Bengal & Anr.**) issued the following direction:-

“It is clarified henceforth 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 concerned. The court should also insist for scrutiny as to whether the person who is surrendering, his previous application for anticipatory bail has been rejected by any higher forum. Sole consideration of compliance of Section 41A of Cr.P.C without considering the case diary, the development of the case cannot be a ground for confirming the bail or passing a permanent order of bail.”

According to the learned Advocate for the petitioner the order dated 22.07.2021 is absolutely erroneous and passed in violation of the direction of this court in CRM 9457 of 2020.

Learned Advocate for the private opposite parties, on the other hand, submits that as the charge-sheet has been filed against the accused persons there is no need to cancel bail granted in favour of the opposite parties.

Having heard the learned Counsels for the parties and on perusal of the order dated 22nd July, 2021 this Court find that at the time of confirmation of bail the learned Magistrate did not consider the case diary.

Therefore, having regard to the decision of the Hon'ble Supreme Court in the case of Satender Kumar Antil (supra) it is directed that on the next date so fixed, private opposite parties shall appear before the court of the learned Metropolitan Magistrate, 12th Court and the learned Metropolitan Magistrate shall pass an order after considering the case diary on the merits of the bail application or the application for confirmation of bail. In view of the direction the order confirming bail of the opposite party is cancelled. However, the opposite parties are entitled to remain on interim bail under the same terms and conditions vide order dated 15th March, 2021 passed by the learned Additional Chief Metropolitan Magistrate II, Kolkata for a period of one month from the date of this order within which they shall file fresh application for confirmation of bail and the learned magistrate shall dispose of the same after giving opportunity to the prosecution of audience.

The instant criminal motion is disposed of with the above order.

(Bibek Chaudhuri, J)