

23.02.2022

Sl. No. 05

Srimanta

Ct.No.42

CRM/7486/2021

(Via Video Conference)

In re : An application for cancellation of bail under Section **439(2)** of the Code of Criminal Procedure, 1973 in connection with G. R. Case No. **1298/2021** arising out of **Pathar Pratima** Police Station Case No. **164/2021** dated **07.07.2021** under Section **420** of the Indian Penal Code.

In the matter of : **Tapas Kumar Maiti**

...petitioner.

Mr. Ayan Basu, Adv.,
Mr. Gouranga Kumar Das, Adv.,
Mr. Sandip Kumar Mondal, Adv.,
Mr. Sumit Routh, Adv.

...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly, Adv.,
Mr. Sandip Chakraborty, Adv.

...for the State.

Mr. Sabir Ahmed, Adv.,
Mr. Mujibar Ali Naskar, Adv.,
Mr. Gora Chand Samanta, Adv.

...for the opposite party nos. 2 & 3.

It is not an uncommon trend and traits of the Advocates to convert an essentially civil dispute to a criminal one giving colour of various offences in respect of the acts and deeds of the parties.

Now the facts. The father of the *de facto* complainant, since deceased, was an owner of a piece of land. After his death, the *de facto* complainant and his other lawful heirs inherited the said property. It is alleged by the *de facto* complainant by lodging a complaint under Section 156(3) of the Code of Criminal Procedure that the opposite party no. 2 is an imposter in the family of his father. She forged a deed

of gift in respect of the property in dispute and subsequently in the year 2020, she executed a deed of gift in respect of a land measuring about 1 acre and 9 decimals out of the property which she allegedly got by virtue of the said deed of gift. Thus, the opposite party no. 2 in collusion with her husband (opposite party no. 3) and others forged a deed of gift, induced the Government authority to record her name in the record of rights on the basis of the said deed of gift and subsequently executed another deed in favour of her husband.

It is submitted by the Learned Advocate for the petitioner that the opposite party nos. 2 and 3 surrendered before the Court below on a day when the case was not fixed for hearing. They surrendered on the strength of put up petition. An application for bail was filed on behalf of the private opposite parties. The copy of the said application was not even served upon the Learned Public Prosecutor-in-Charge. On the other hand, the Learned Magistrate granted interim bail to the accused persons on perusal of the so-called forged deed of gift and entries in the record of rights. According to the Learned Advocate for the petitioner, the said order of bail is bad in law and liable to be cancelled.

Learned Advocate for the opposite parties submits that the deed of gift in favour of the opposite party no. 2 was executed by the father of the petitioner way back in 1987. The father of the petitioner used to stay at Pathar Pratima under the Sub-division of Kakdwip. The petitioner used to stay at Tamluk in the district of Midnapore. He never looked after his father. During his old days, the opposite party no. 2 used to look after the father of the petitioner so he treated opposite party no. 2 as an adopted daughter. The deed of gift contains such recital. It was registered in the year 1987. Subsequently, the name of the opposite party no. 2 was

mutated in the record of rights. Only after a portion of the land was gifted by opposite party no. 2 in favour of opposite party no. 3, the petitioner has filed the instant complaint making certain allegations. If a deed of gift is forged one, the same can be challenged by filing a suit for declaration and injunction in the competent civil Court. The petitioner did not take such step. He filed a complaint under Section 156(3) of the Code of Criminal Procedure before the Learned A.C.J.M., Kakdwip.

At this stage, however, this Court cannot consider the genuineness, veracity and applicability of the various provisions of the offences on which the case was registered.

The scope of the instant application is to consider as to whether the order of the Learned Magistrate is liable to be cancelled or not. In ***Satender Kumar Antil –Vs.- Central Bureau of Investigation & Anr, (2021) 10 SCC 773 : (2022)1 SCC (Cri)153 : 2021 OnLine SC 922*** certain guidelines are stated while dealing with an application for bail. These are the following guidelines: -

“Categories/Types of offences

- (A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.
- (B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
- (C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S. 37), PMLA (S. 45), UAPA (S. 43D (5), Companies Act, 212(6), etc.
- (D) Economic offences not covered by Special Acts.

Requisite Conditions

- (1) Not arrested during investigation.

- (2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.
- (3) (No need to forward such an accused along with the charge-sheet(Siddharth Vs. State of UP, 2021 SCC online SC615))

Category A

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 be decided W/O the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

Category C

Same as category B & D with the additional condition of compliance of the provisions of Bail under NDPS S.37,

45 PMLA, 212 (6) Companies Act 43 d (5) of UAPA, POCSO etc.”

It is true that while considering an application for bail the Learned Magistrate is required to hear the Learned Public Prosecutor/Assistant Public Prosecutor and peruse the Case Diary. However, in appropriate cases if the Court finds that there is no *prima facie* material, the Learned Magistrate can grant interim bail and call for the Case Diary. In the instant order the said direction is missing.

Mr. Sandip Chakraborty, Learned Public Prosecutor-in-Charge has raised the issue of maintainability of the instant application for cancellation of bail.

Therefore, while maintaining the order of interim bail, the Learned Magistrate is directed to call for the Case Diary and hear out the Learned Assistant Public Prosecutor before confirmation of bail of the opposite party nos. 2 and 3.

Let a copy of this order be sent to the Learned A.C.J.M., Kakdwip through the Learned Sessions Judge, South 24-Parganas at Alipore forthwith for information and compliance.

The instant application is, thus, **rejected** on contest, however, without cost.

(**Bibek Chaudhuri, J.**)