

30.03.2022

Serial no. 08

Srimanta
Ct. No. 42

(Through Video Conference)
CRM 7660 of 2017

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

And-

In the matter of : **Sanjoy Kumar Sinha**

... Petitioner.

Mr. Phiroze Edulji, Adv.,
Mr. Rajdeep Biswas, Adv.,
Mr. Ajay Chaubey, Adv.,
Mr. Siddhartha Chakraborty, Adv.,
Ms. Aiswarya Chatterjee, Adv.

...for the Petitioner.

Mr. Prasun Kumar Datta, Adv.,
Mr. Partha Pratim Das, Adv.,
Mr. Mirza Firoz Ahmed Begg, Adv.

...for the State.

Mr. Sabir Ahmed, Adv.,
Mr. Abdul Aziz Mondal, Adv.,
Mr. Mujibar Ali Naskar, Adv.

...for the opposite party nos. 2 to 4.

Affidavit-of-service filed in Court today be kept with the record.

This is an application for cancellation of bail of opposite party nos. 2 to 4. Ms. Aiswarya Chatterjee, Learned Junior Advocate to Mr. Phiroze Edulji submits that Gosaba Police Station Case No. 149/2017 was investigated in a perfunctory manner and charge-sheet was submitted against the opposite parties diluting the gravity of offence. It is also submitted by her that when religious chanting was being conducted in the house of the *de facto* complainant, the accused persons appeared at the spot and assaulted the *de facto* complainant and other devotees. The *de facto* complainant received fracture of ulna being assaulted by the accused persons. Therefore,

charge-sheet ought to have been filed by the Police Authority under Section 307 of the Indian Penal Code and Section 326 of the Indian Penal Code.

It is also submitted by her that the Investigating Officer did not pray for filing of supplementary charge-sheet against the accused persons. Moreover, there is specific allegation of outraging modesty of the devotees who were present there by the accused persons. The Learned Additional Chief Judicial Magistrate, Alipore passed an order of bail without considering such aspect of the matter. Mr. Edulji has also supplemented to the submission made by his Learned Junior. It is submitted by Mr. Edulji that the accused persons not only assaulted and outraged modesty of the persons who assembled at the spot but also ransacked the house of the *de facto* complainant and committed mischief. Therefore, the bail granted to the opposite parties may be cancelled.

Mr. Sabir Ahmed, Learned Advocate for the opposite parties, on the other hand, submits that the Learned Additional Chief Judicial Magistrate granted bail to the accused persons on perusal of the Case Diary and in view of the fact that charge-sheet has been submitted against them and they are not required for investigation. It is also submitted that the injury report at pages 11 and 18 of the instant petition does not support the contention of the petitioner.

Learned Public Prosecutor-in-Charge has also opposed the prayer for cancellation of bail.

Having heard the Learned Counsels for the parties and on careful perusal of the entire materials-on-record it is found that the *de facto* complainant did not file any protest petition against charge-sheet filed by the Investigating Officer against the opposite parties. It is alleged in the petition of complaint that the accused persons/opposite parties assaulted the *de facto* complainant and others with the help of iron rod and fists and blows. Therefore, in the charge-sheet the accused persons were directed to face trial under the charge of Section 325 of

the Indian Penal Code. I do not find any ingredient of offence under Section 307 of the Indian Penal Code against the opposite parties. Moreover, during submission it was mentioned that a counter case is also pending between the same parties over the selfsame incident. Considering of such aspect of the matter, I do not find any reason to interfere with the order passed by the Learned Additional Chief Judicial Magistrate, Alipore.

However, it is expected for him that he should not dispose of the application for bail by a two lines order and reasons should be subscribed in the order granting bail. Because of such two liners pendency of the application under Section 439(2) of the Code of Criminal Procedure is piling up. The Learned Additional Chief Judicial Magistrate, Alipore be appraised about the fact by sending a copy of the order to him. The instant application is, thus, **disposed of** with the direction that the opposite parties shall attend the trial on each and every date when it is fixed for trial.

(Bibek Chaudhuri, J.)