

07.11.2022
S/L No.4
KS

C.R.M.(SB) 214 of 2022
Srimontha Bhattacharya
-Vs.-
Surja Majhi & Ors.

In Re: An application under Section 439(2) of the Code of Criminal Procedure.

Mr. Lakshmi Nath Bhattacharya	
	 For the Petitioner
Mr. Saryati Datta	
	For the State
Mr. Satadru Lahiri	
	For the Opposite Party

Learned advocate appearing for the petitioner challenges the orders dated 25.11.2021 and 29.11.2021. The grievance of the petitioner is that the Learned Magistrate without perusal of the Case Diary and considering the requirement of the accused persons for the purposes of investigation granted bail to three of the accused persons immediately on their surrender.

Mr. Lahiri, learned advocate appearing for the private opposite parties opposes such contentions and submits that two of the other accused persons were also granted bail in similar manner on 11th November, 2021 but, the de facto complainant as cherry picked the present petitioners for cancelling their bail.

I have perused the orders dated 11.11.2021, 25.11.2021 and 29.11.2021. On perusal of the same, I find that Learned Magistrate did not consider the Case Diary or call for any report of the Investigating

Officer and there is no submission of the Learned Additional Public Prosecutor being recorded in the said orders which would guide a Court of Law to arrive at its finding as to whether custodial detention of the petitioners are at all required in a case or not. This Court on earlier occasion following the judgment of the Hon'ble Supreme Court has been pleased to observe that in such circumstances where the cases are Magistrate triable, at the first instance on surrender the Court may grant an ad interim bail fixing a date for calling the Case Diary and, thereafter, decide the bail on merits. In all these orders, I find that the materials collected by the Investigating Agency, complicity of the petitioners in connection with the merits of the case and their requirement at all if necessary in connection with the instant case was not at all considered by the Learned Magistrate. The only materials which were considered by the Learned Magistrate are the written complaint and the formal First Information Report which cannot be a basis for consideration of application for bail in a case where investigation is under progress.

In view of the aforesaid, the earlier orders granting bail on 11.11.2021, 25.11.2021 and 29.11.2021 are modified till 30th November, 2022. The accused persons should be present before the Learned A.C.J.M., Diamond Harbour on 15th November, 2022. The State is directed to produce the Case Diary on the said date. Each of the accused persons would be allowed opportunity to place oral as well as their written submissions. Learned Magistrate would consider the

merits of the case and whether at all their custody is required or not and, thereafter, pass his order assigning his reasons.

Needless to state that this Court has not gone into the merits of the case whether the offence was committed or not, but what this Court has stressed upon is the mode and manner in which the bail has been granted without perusal of the Case Diary. Learned Court, therefore, is directed to pass an order independently without being influenced by any observations passed by this Court.

Learned A.C.J.M., Diamond Harbour after hearing all the parties on 15th November, 2022 and also on all subsequent dates as may be fixed by the said Court dispose of their application for bail on or before 30th November, 2022. The petitioner before this Court being the de facto complainant intends to file an application for cancellation of bail before the Learned A.C.J.M., Diamond Harbour, if such an application is filed on 15th November, 2022, copies of the same may be served upon all the affected parties and the Learned A.C.J.M. in course of hearing will consider the aspect of the submissions of the de facto complainant also.

With the aforesaid observations, C.R.M.(SB) 214 of 2022 is disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)