

16.12.2022

Item No.29

Ct.No.34

dc.

C.R.M. (SB) 277 of 2022

In Re : An Application under Section 439 (2) of the Code of Criminal Procedure, 1973.

And

In Re : **Tripti Roy**

... Petitioner.

Mr. Shibaji Kumar Das,
Mr. Soumyajit Das Mahapatra,
Ms. Rupsa Sreemani,
Ms. Ankita Giri

... For the Petitioner.

Mr. Joydeep Roy,
Mrs. Sujata Das

... For the State.

Mr. Palash Ch. Majhi

... For the Opposite Party No.2.

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

The subject-matter of challenge in the present application for cancellation of bail relates to the order dated 18.10.2022 passed by learned Chief Judicial Magistrate, Hooghly in connection with Pandua Police Station Case No. 445 of 2022 dated 29.09.2022 under Sections 420/406 of the Indian Penal Code.

The grievance of the present petitioner is that the learned Magistrate on the said date without perusal of the case diary granted bail on the basis of the materials produced at the instance of the accused.

Mr. Majhi, learned advocate appearing for the accused/private opposite party no.2 submits that even if the allegations in the FIR are accepted to be true, the same do not make out any offence under the criminal law; a civil dispute has been given the cloak of criminal proceedings and the complainant/petitioner is adamant to send the opposite party no.2 behind the bars. Learned advocate for the opposite party supports the order passed by the learned Magistrate and contends that there has been no allegation of violation of post bail conduct and as such, the order need not be interfered with by this Court.

Mr. Roy, learned advocate appearing for the State submits that on the relevant date on which the accused was granted bail, the case diary was not produced. Learned advocate, however, submits that subsequently the police authorities have submitted charge-sheet in connection with the instance case.

Mr. Das, learned advocate for the petitioner has emphasised that the accused successfully allured the petitioner to part with a substantial sum and intentionally failed to keep up his commitment. An offence has been made out. The submission of the learned advocate for the accused that the order passed by the learned Magistrate is against the basic principles settled by the Hon'ble Supreme Court that in a given set of facts both criminal case and civil case can proceed parallelly and independently.

I have considered the submissions advanced by the learned advocates appearing for the parties and on an overall assessment of the same, I am of the opinion that the learned Magistrate ought to have considered the case diary while considering the application for bail particularly, in case of G.R. cases and at a stage when the investigation of the case was under progress. The case record referred to in the order has no significance because the case record at the relevant period of time at the stage of investigation will only contain the order-sheets, FIR/letter of complaint and may be seizure list or statement under Section 164 of the Code of Criminal Procedure.

The learned Magistrate as directed by the Supreme Court and also orders passed by this Court should at the first instance grant interim bail for a very limited period of time, call for the case diary and thereafter decide the case on merits. This has been repeatedly reiterated by this Court to the courts considering bail application.

The bail order so granted on 18.10.2022 by the learned Chief Judicial Magistrate, Hooghly is modified to the extent that the bail order would continue till 31.01.2023. The complainant/petitioner, the accused/opposite party no.2 and the State would appear on 16.01.2023 before the learned Chief Judicial Magistrate, Hooghly. The learned Chief Judicial Magistrate, Hooghly will allow the parties to advance their arguments and thereafter consider the bail of the accused.

Needless to state that the aforesaid observations are in no manner an indication that the bail of the accused/opposite party no.2 should be cancelled. It is only a direction that the proper mode and manner must be followed while considering an application of bail irrespective of the fact whether it is allowed or rejected.

With the aforesaid observations, the application for cancellation of bail, being CRM (SB) 277 of 2022, is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)