

11.02.2022

Item No.05

Suman/Srimanta

Ct.42

(Via Video Conference)

CRM 10186 of 2015

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

And

In the matter of: **Chittaranjan Sikder**
Vs.
State of West Bengal & Ors.

Mr. Satadru Lahiri
Mr. Sankhadeep Ghosh
Mr. S. Dasgupta
...for the petitioner

Mr. Anirban Dutta
Ms. Pallabi Ghosh
...for respondent Nos. 2, 3, 4 & 5.

Mr. Ranabir Roy Chowdhury
Mr. Sandip Chakraborty
...for the State

This is an application for cancellation of bail filed by the de facto complainant on 15th October, 2015. At the outset, I like to record that the opposite parties are enjoying the liberty of bail for more than seven years. After seven years of filing of the application for cancellation of bail, the matter is listed for hearing. This is undoubtedly an unfortunate state of dispensation of justice.

Considering such aspect of the matter, the learned Registrar, Administration (L & O M) is requested to submit a list of such old pending applications for cancellation of bail within seven days from the date of this order so that the said applications may be disposed of at the earliest.

The above portion of the order be sent to the learned Registrar, Administration (L & O M) forthwith for information and compliance.

By filing the instant application the de facto complainant of Sonarpur Police Station Case No.18 dated 4th January, 2015 corresponding to G.R. Case No. 152 of 2015 has prayed for cancellation of bail granted by the learned Additional Chief Judicial Magistrate, Baruipur on 6th October, 2015.

It is submitted by the learned advocate for the applicant that the petitioner is praying for cancellation of bail of the accused persons on the ground of their post bail activities. The petitioner is the Managing Director of Esdee Electro Mill Pvt. Ltd., a company incorporated under the Company's Act, 1956. There is a factory of the said Company in a piece of land situated within Sonarpur Police Station. The de facto complainant / applicant lodged a complaint on 4th January, 2015 that on the self-same date the accused persons broke the compound wall of the factory and criminally trespassed into the official quarters of the Works Manager and took away valuable articles from his quarters and the factory. The son of

the de facto complainant tried to resist them but he was assaulted by the accused persons. In order to disperse such unruly mob the de facto complainant opened fire from his licenced pistol. They also snatched away the said pistol by overpowering the de facto complainant.

On the basis of the said complaint police registered Sonarpur Police Station Case No.18 dated 4th January, 2015 under Sections 427/448/379/506/34 of the Indian Penal Code and took up the case for investigation.

The learned advocate for the applicant next draws my attention to order dated 14th January, 2015. On that date the principal accused namely Giasuddin Haldar was enlarged on bail with a condition that he would meet the Investigating Officer once in a week for the next two months.

It is submitted by the learned advocate for the petitioner that after the bail being granted the above named accused along with his associates started all sorts of disturbance in the form of criminal trespass, assault, mischief, theft etc. for which the de facto complainant had to lodge three criminal cases on 5th June, 2015, 18th June, 2015 and 21st May, 2015. The de facto complainant also filed an application before the Learned Additional Chief Judicial Magistrate, Baruipur praying for cancellation of bail under Section 437 (5) of the Code of Criminal Procedure but the said application was also rejected by the Learned Magistrate. So, the *de facto* complainant has filed the instant application.

It is submitted by Mr. Lahiri, Learned Advocate for the *de facto* complainant that but for the illegal act or omissions carried out by the accused persons it is absolutely impossible for the *de facto* complainant to run his business. Moreover, as the accused persons are on bail and they are dangerous persons of the locality the *de facto* complainant has every apprehension that they would tamper the evidence of the prosecution by way of threat and inducement to the witnesses for the prosecution. Therefore, the order of bail should be cancelled and the accused should be taken into custody.

Mr. Datta, Learned Advocate for the private opposite parties/accused persons submits referring to an order dated 1st April, 2016 that a Coordinate Bench of this Court passed an order directing the Superintendent of Police, South 24-Parganas to cause an inquiry into the allegations of misuse of liberty by the opposite parties and submit a report on the next date of hearing.

The Superintendent of Police, South 24-Parganas has submitted a report on 8th June, 2016 stating, *inter alia*, that detailed inquiry conducted by the Additional Superintendent of Police (East Zone), South 24-Parganas does not reveal any instance/condition where the opposite parties misused/tried to misuse the liberty granted to them by the Learned Court.

It is ascertained from the submissions made by the Learned Counsels for the parties that there is a long-standing land dispute between the *de facto* complainant and the accused persons. A civil suit was filed for declaration and injunction. In the said suit, the *de facto* complainant did not get any order of injunction by the Trial Court. It is the allegation of the accused persons that the *de facto* complainant or its Company has been encroaching upon the land of the accused persons and constructed boundary wall. Thus, the entire dispute between the parties is essentially civil in nature. The criminal cases and complaints are in the nature of offshoots and those were filed only to harass the accused persons.

Having heard the submissions made by the Learned Advocates for the parties, this Court is also of the view that the dispute between the parties is essentially civil in nature. Moreover, the report submitted by the Superintendent of Police suggests that the accused persons did not misuse the conditions for bail. Therefore, this Court has no other alternative but to hold that the allegations made by the *de facto* complainant is unfounded and baseless. In view of above discussion, the instant application for cancellation of bail is dismissed on contest.

Let a copy of this order be sent to the Learned Additional Chief Judicial Magistrate, Baruipur, South 24-Parganas.

(Bibek Chaudhuri, J.)