

15.02.2022

9

sdas

allowed

C.R.M. 11134 of 2020
(via video conferencing)

In Re : An application for cancellation of bail under section 439 (2) of the
Code of Criminal Procedure

And

In Re : Subrata Mondal petitioner

Mr. Tanmoy Chowdhury

..... for the petitioner

Mr. Neguive Ahmed, learned APP

Mr. Narayan Prasad Agarwal

..... for the State

Mr. Subhadeep Ghosh

..... for the surety Namita Mondal

Report is placed on record. It appears from the report that the opposite party no. 2/accused is unavailable at his residence. In spite of efforts his whereabouts could not be traced out. Surety, Namita Mondal, was intimated personally to produce the opposite party no. 2/accused in Court. She is represented before us by the learned Counsel who states that she has no knowledge of the whereabouts of the opposite party no. 2/accused. Other surety, Bankim Chakraborty, who was not physically available was intimated through social networking Whatsapp platform, opposite party no. 2/accused is absent today.

From the aforesaid materials on record we are of the prima facie opinion that the opposite party no. 2/accused is avoiding the process of the Court and has absconded. That apart, we note that the order of bail was passed without considering the gravity of the offence involving murder of the two individuals. In view of the

prevailing pandemic situation, Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 1 of 2020 by orders dated 23.03.2020¹ and 07.05.2021² directed for constitution of High Powered Committees who would issue directions for early release of prisoners on bail or parole. It is nobody's case that the opposite party no. 2/accused has been recommended by the High Powered Committee for early release. Moreover, Hon'ble Apex Court had directed to consider gravity of the offence and other relevant factors while making such recommendation. These aspects of the matter were lost sight of by the learned trial Judge while granting bail to the opposite party no. 2/accused. Thus, the order of bail granted to the opposite party no. 2/accused is wholly perverse and liable to be set aside. As discussed earlier, ample opportunity was given to the opposite party no. 2/accused to respond to the application but he appears to have absconded. It is also alleged that he had threatened witnesses. This post bail conduct of the opposite party no. 2/accused further persuades us to hold that the release of the opposite party no. 2/accused on bail was wholly unjustified and has affected the smooth administration of justice. Impugned order granting bail to the opposite party no. 2/accused is set aside.

Bail bonds furnished by him are cancelled and he is directed to be taken in custody forthwith.

¹ 2020 SCC OnLine SC 344

² 2021 SCC OnLine SC 376

It is open to the investigating agency to resort to the appropriate processes in accordance with law to ensure the arrest of the opposite party no. 2/accused.

Application for cancellation of bail is, thus, allowed.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)