

30.03.2023

68
Ct. No. 29
CHC

C.R.M.(DB) 543 of 2023

In Re:- An application for cancellation of anticipatory bail.

And

In the matter of : Ganesh Das

..... petitioner

Mr. Monish Sen,
Ms. Oisani Mukherjee
....for the petitioner

Mr. Nirupam Dhali
....for the State

Mr. Prabir Majumder,
Mr. D. Guha
...for the private opposite parties

Petitioner seeks cancellation of the order granting anticipatory bail to the private opposite parties on September 28, 2022 passed by the learned Sessions Judge-in-Charge, in Criminal Misc. Case No.1597 of 2022.

Learned advocate appearing for the petitioner submits that petitioner is involved in a racket whereby, properties belonging to the petitioner were sought to be transferred in favour of different persons for valuable consideration. He refers to the order granting anticipatory bail. He submits that the impugned order does not contain reasons as to why anticipatory bail was granted. Moreover, he submits that, as against the private opposite parties a number of criminal cases are pending. In one of such criminal cases, the private opposite parties were enlarged on bail. In an application for cancellation

of bail, the coordinate Bench, by an order dated November 29, 2022 passed in CRM (DB) 1386 of 2022 observed that once an accused surrendered before the Magistrate and was taken into custody, it was not within the domain of the Magistrate to release him without execution of a bail bond. In the present case, the opposite parties, initially surrendered before the learned Magistrate on July 23, 2021. Thereafter, the learned Magistrate allowed the private opposite parties to go scot-free by recording that the surrender was not accepted. He submits that, the private opposite parties thereafter, applied for anticipatory bail before the Judge-in-Charge and obtained the same.

State and the private opposite parties are represented.

Learned advocate appearing for the private opposite parties submits that private opposite parties are no way connected with regard to the transaction in question. Private opposite parties were falsely implicated. Apparently, number of criminal complaints are pending against the private opposite parties. In one of such criminal complaint, bail was granted to some of the accused therein. An application for cancellation of the bail was filed being CRM (DB) 1386 of 2022 which was disposed of by an order dated November 29, 2022.

The coordinate Bench, recorded as follows:-

“Once an accused has surrendered before the Magistrate and has been taken into custody, it is not within the domain of

the Magistrate to release him without execution of a bail bond. On 21.04.2022 opposite party no.5 surrendered before the Magistrate and was taken into judicial custody. For reasons best known to the said accused, he did not press his bail application. Under such circumstances, only option available to the Magistrate was to remand the said accused to judicial custody. In a clear misunderstanding of law, he allowed the accused to go scot-free. Subsequently, the said accused on repeated occasions made applications for surrender but withdrew them. Finally, on 29.04. 2022 he again surrendered and was released on bail. This conduct of the opposite party no.5-accused clearly shows a desperate effort at forum shopping to ensure his release on bail.

On earlier occasions the court of learned Additional Chief Judicial Magistrate was manned by a different judicial officer. Hence, opposite party no.5 withdrew his applications for surrender and finally appeared and prayed for bail upon change of judicial personnel. His conduct was inadvertently aided by the incorrect understanding of law by the earlier judicial officer who permitted him to go scot-free notwithstanding his withdrawal of bail application.

In view of the aforesaid conduct of the opposite party no.5, we are of the

opinion he had procured the order of bail through sharp practice and the same is liable to be set aside on this score.”

The private opposite parties herein are on the same footing as the private opposite party no.5 in CRM (DB) 1386 of 2022. The private opposite parties herein surrendered before learned Magistrate on July 23, 2021, thereafter, withdrew the petition. The learned Magistrate allowed the private opposite parties herein to go scot-free.

The conduct of the private opposite parties are similar to the conduct of the opposite party no.5 in CRM (DB) 1386 of 2022. On the basis of the parity of the same reasoning, therefore, the private opposite parties herein can be said to indulge in sharp practices in obtaining the order of anticipatory bail.

In such circumstances, we cancel the order granting anticipatory bail of the private opposite parties granted on September 28, 2022. All consequential steps taken pursuant to the order of September 28, 2022 are also cancelled.

The private opposite parties will surrender before jurisdictional Court within fortnight from date.

CRM (DB) 543 of 2023 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

