

23.11.2023
Sl. No.69
akd

C. R. M. (DB) 1168 of 2023

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 17.03.2023:

A N D

In Re : Rupa Banerjee

..... Petitioner

Mr. Anirban Mitra
Md. Wasim Akram
Mr. Amit Roy
Mrs. Madhumita Sadhukhan
... .. for the petitioner

Mr. Debabrata Ray
Mr. Gazi Faruque Hossain
Ms. Priyanka Mondal
Ms. Sarbani Mukhopadhyay
Mr. Sumit Mondal
Ms. Papiya Naskar
... .. for the opposite party no.2

Mr. Parthapratim Das
Mrs. Manasi Roy
... .. for the State

1. Petitioner has assailed order dated 24.02.2023 passed by the learned Additional Chief Metropolitan Magistrate-II, Calcutta refusing to cancel the bail granted to opposite party no.2 herein on 09.09.2022 in connection with the present case.
2. The factual matrix giving rise to the present FIR is to the effect that the petitioner had met opposite party no.2 herein through a social networking site. They became close friends since 2015-16. Petitioner was unmarried and suffered from depression. She used to take medicine. In 2017 she expressed her feelings towards the opposite party no.2. She visited his house during *Viswakarma* puja. Opposite party no.2 insisted on developing physical relationship with her but she was unwilling. She insisted on marriage but he was not agreeable to the proposal. He blocked her on the social

networking site. Thereafter, they again renewed their association on another social networking site. During puja in the year 2021 petitioner met the opposite party no.2. She ate food and was feeling uneasy. Opposite party no.2 put his hand on her body and tried to comfort her. Thereafter he embraced her. Petitioner was not in a position to resist. Thereafter they had sexual intercourse on that day. Opposite party no.2 also promised her that he would marry her. They had sexual intercourse on a number of occasions. She even took abortion pills. In December, 2021 opposite party no.2 expressed his unwillingness to marry on the ground that his sister-in-law was not agreeable to marriage. Thereafter on a number of occasions in January and April, 2022 the petitioner unsuccessfully tried to negotiate the matter but the opposite party no.2 obstinately refused to marry.

3. On the aforesaid allegations, FIR came to be registered on 14.07.2022. In the course of investigation, opposite party no.2 was arrested and remanded to custody.
4. At that juncture, petitioner filed an affidavit stating she had no objection to opposite party no.2 being granted bail. Accordingly, the said opposite party no.2 was enlarged on interim bail. Subsequently petitioner changed her stance and claimed that she had been compelled to file the affidavit and prayed for cancellation of the interim bail. She claimed the Investigating Officer had called her to the police station and forced her to sign the affidavit. Learned Magistrate by the impugned order however, declined to cancel the bail.
5. It is submitted on behalf of the petitioner that the interim bail had been obtained through fraud. Opposite party no.2 had promised to

marry the petitioner and on such premise she had submitted the '*no objection*' to the interim bail.

6. In view of the aforesaid submission, this Court enquired from the petitioner, who is personally present in court, whether she was still willing to marry the opposite party no.2. She replied in the affirmative.
7. Learned Advocate for opposite party no.2 disputes the position. He submits that his client has been falsely implicated in the instant case. Ingredients of the offence of rape have not been made out. His client is not willing to marry the petitioner.
8. It is settled proposition of law that a court of law cannot force a party to marry. In view of the fact that the opposite party no.2 is unwilling to marry the petitioner, this court has chosen to examine the issue of bail on merits.
9. To do so we have gone through the statement of the victim recorded under Section 164 of the Code of Criminal Procedure. Tenor of the statement gives an impression that the parties were acquainted to each other. Proposal of marriage was given by the petitioner first which was rebuffed by opposite party no.2 who blocked her on the social networking site. In spite of such conduct, petitioner again entertained opposite party no.2 and developed intimate relationship.
10. What prompted her to bestow faith on the assurance of opposite party no.2 with regard to marriage when the latter had earlier taken a contrary stance requires to be examined during trial.
11. Be that as it may there was free mixing by and between the parties and physical relationship developed. In order to assess the allegation of rape it is essential to test whether the accused had knowingly made a false promise which he did not intend to keep.

Continued seesaw in the relationship between the parties shows a waxing and ebbing of affection between each other.

12. In this backdrop it is difficult to come to a firm conclusion that opposite party no.2 had intentionally induced the petitioner into a physical relationship on the false promise of marriage. We refrain from making a final comment on the matter as the same shall be thrashed out in the course of trial. Opposite party no.2 was arrested and had suffered incarceration for about a month. Purpose of investigation does not require further detention.

13. It is strongly contended petitioner had been persuaded to give the '*no objection*' on the promise that opposite party no.2 would marry her after being released on interim bail. We do not find any such assurance endorsed in the said '*no objection*' furnished on the part of the petitioner. Even the allegation that she was hesitant and was persuaded to accept the marriage proposal at the behest of the police does not appear to be convincing since even now she shows willingness to marry opposite party no.2 but the latter is unwilling to do so.

14. For these reasons, we are of the opinion no case for cancellation of bail of opposite party no.2 has been made out.

15. CRM (DB) 1168 of 2023 is accordingly, disposed of.

16. We however, note observations made by us are for the disposal of the application and shall not have any bearing at the subsequent stage of the proceeding which shall be decided independently and in accordance with law.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)