

23.02.2023

Court No.04
Item No.03

CRR 1016 of 2015

Jakir Hossein Peada @ Jakir Hossain Peada
Vs.
The State of West Bengal and another.

Ab

This criminal revision has been preferred at the behest of the petitioner under Sections 397/401/482 of the Code of Criminal Procedure with a prayer for quashing the impugned order dated 4th March 2015 passed by the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24-Parganas in connection with Kulpi Police Station Case No. 06/2015 dated 02.01.2015 under Sections 498A/406 of the Indian Penal Code corresponding to G.R. Case No. 240/2015, whereby and whereunder the learned Magistrate rejected the bail bond of the accused petitioner and issued warrant of arrest by passing the impugned order.

Being aggrieved by and dissatisfied with the impugned order dated 4th March 2015 passed by the learned Magistrate, this petitioner preferred the instant revisional application.

No one is present on behalf of either of the parties.

The instant matter relates to administration of criminal justice. As held by the Hon'ble Supreme Court in case of **Madan Lal Kapoor vs. Rajiv Thapar and others**, reported in **(2007) 7 SCC 623** that a criminal matter cannot be dismissed for default or dismissed for non-prosecution rather it should be decided on merits.

So, the instant matter is taken up for disposal on merit.

The facts leading to filing of this criminal revision in short is that this petitioner has been arraigned as accused person along with others in Kulpi Police Station Case No. 06/2015 dated 02.01.2015 under Sections 498A/406 of the Indian Penal Code. Pursuant to such lodging of FIR, the other accused persons in connection with the case apart from the petitioner surrendered before the Magistrate

and was enlarged on bail. This petitioner preferred an application for anticipatory bail before the learned Sessions Judge at Alipore being Criminal Misc. No. 643 of 2015 and a date was fixed by the learned Sessions Judge for hearing of the said anticipatory bail application. In the meantime, this accused petitioner surrendered before the learned Magistrate on 28th January 2015 and was enlarged on interim bail, which was subsequently confirmed by the learned Court by putting some conditions upon this petitioner.

The application praying for anticipatory bail filed by the accused petitioner was rejected being not moved by the learned Sessions Judge on 3rd February 2015. Thereafter, the learned Magistrate cancelled the bail bond of the accused petitioner and issued warrant of arrest on the ground of suppression of pendency of the anticipatory bail application filed by the accused petitioner before the learned Sessions Judge.

I have perused the impugned order passed by the learned Magistrate on 4th March 2015 as well as the contentions of the instant petition.

Section 437(5) of the Code provides for cancellation of bail by a Court other than the High Court or Sessions Court. It confers power of cancellation on the learned Magistrate Court. It states that a Court other than the High Court or Sessions Court may if it considers necessary to do so, direct that a person released on bail by which be arrested and committed to custody. It means Court that has released the accused on bail has power to direct arrest of such person and commit him to custody, if subsequent to release on bail, the circumstances justify to do so. Ordinarily, the Court would be entitled to exercise this power only where the person released on bail is guilty of misuse of the liberty granted by the Court or where there is new development in the investigation process or recovery of cogent materials prima facie involving accused with offence. However, the bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to

retain his freedom by enjoying the concession of bail during the trial.

The grounds for cancellation of bail have also enshrined under Section 437(5) and 439(2) of the Code, which are identical in nature. The bail granted under Section 437(1) or 437(2) or Section 439(1) can be canceled where the accused (1) misuses his liberty by indulging in similar activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence or witnesses, (4) threatens the witnesses or indulges in similar activities, which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency and (7) attempt to place himself beyond the reach of his surety etc. Section 439(2) of the Code confers power upon the High Court or Sessions Court to direct that any person who has been released on bail be arrested and commit him to custody. So, Section 439(2) and Section 437(5) makes it clear that the powers of cancellation of bail vested in the High Court and the Sessions Court are very wide vis-à-vis the powers of the Magistrate Court. The Magistrate has power to pass the subsequent order altering or amending or deleting the conditions of the earlier bail order in any manner whatsoever. Section 437(5) of the Code impliedly confers such power on the Magistrate.

So, it is clear to me that when the accused was enlarged on bail, it is not open to the Magistrate to cancel his bail without following the provisions as enumerated in Section 437(5) of the Code.

Section 437(5) of the Code empowers the Court to direct that the person so released may be arrested if it considers it necessary to do so. The power of the Court to cancel the bail if it considers it necessary is preserved in cases where a person has been released on bail under Section 437(1) and Section 437(2) of the Code.

In this case, eventually the order passed by the learned Magistrate is not in conformity with the provisions as enumerated in Section 437(5) of the Code.

It is lighted from the impugned order that the application filed under Section 438 of the Code preferred by the petitioner before the

learned Sessions Court at Alipore was rejected being not moved by the learned Judge on 3rd February 2015. On 28th January 2015 this petitioner surrendered before the learned Magistrate and was granted interim bail by putting conditions therein and the same was confirmed by the learned Magistrate on 11th February 2015. The bail bond filed by the petitioner was rejected by the learned Magistrate by passing the impugned order dated 4th March 2015 on the ground that the prayer for anticipatory bail filed under Section 438 of the Code was rejected by the learned Sessions Judge at Alipore and that was deliberately suppressed by the accused petitioner.

The learned Magistrate before directing arrest should consider it necessary to do so under Section 437(5) of the Code. More so, the anticipatory bail application filed by the petitioner was rejected by the learned Sessions Judge without inviting the Court to consider the same on merit.

Since the learned Magistrate has not followed the provisions of Section 437(5) of the Code in canceling the bail bond of the petitioner and issuing warrant of arrest, the impugned order is vitiated with illegality.

In the result, I hold that the cancellation of bail for the reasons stated by the learned Magistrate is not sound at all and is liable to be cancelled. The impugned order dated 4th March 2015 passed by the learned Magistrate stands cancelled.

In instant application filed by the petitioner under Sections 397/401/482 of the Code stands allowed.

Therefore, the petitioner is enlarged on bail on his entering into a bond of Rs. 10,000/- with two sureties each for a like sum to the satisfaction of the learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24-Parganas.

Since it is a long pending case, the concerned learned Magistrate is directed to take all endeavour to complete the hearing of the case preferably within three months from the date of communication of this order.

Let a copy of this order be sent to the learned Trial Court for information and necessary compliance.

(Prasenjit Biswas, J.)