

D/L62
17.07.2023
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C.R.R.2402 of 2023

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Dr. Anirban Ganguly @ Anirban Ganguli
Versus
The State of West Bengal

Mr. Phiroze Edulji
Ms. Roustavi Mukherjee
Ms. Pallavi Priyadarsee
Ms. Soumili Choudhury.
...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld.P.P.
Mr. Anwar Hossain
Ms. Debjani Sahu.
...for the State.

Memo of evidence submitted by Mr. Mukherjee, learned
Public Prosecutor, be kept with the record.

The revisional application has been preferred challenging
the order dated 17.04.2023 passed by the learned ACJM, Bolpur,
Birbhum wherein the application under Section 205 of the Code of
Criminal Procedure was dismissed in connection with Bolpur Police
Station Case No.132 of 2021 dated 21.04.2021.

Mr. Mukherjee, learned Public Prosecutor was directed to
produce the case diary. Learned Public Prosecutor has produced the
photostat copy of the case diary. However, the case diary do not
reflect that at any point of time, notice under Section 41A of the
Code of Criminal Procedure was ever served upon the present
petitioner. Secondly, Section 172 of the Code of Criminal Procedure
in the case diary do not give a clear picture as to where raid was

conducted for the purposes of this Case. The Investigating Authorities are unable to explain as to how and whether the petitioner has not cooperated with the investigation of the case.

Mr. Edulji, learned advocate appearing for the petitioner has relied upon the judgment of **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **(2021) 10 SCC 773**. By drawing the attention of this Court to category A wherein it has been stated as follows:

“After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.”

Having regard to the guidelines laid down by the Hon'ble Supreme Court and the nature of the offence complained of, I am of the view that the first appearance may not be insistent prior to application under Section 205 of the Criminal Procedure be considered by the learned Magistrate.

In view of the application under Section 205 of the Code of Criminal Procedure which has already been filed by the petitioner, I direct that certain amendments are required in the said application under Section 205 of the Code of Criminal Procedure. To that effect, an opportunity is granted wherein an application under Section 205 of the Code of Criminal Procedure will be filed by the present petitioner with an undertaking that he will appear on the date of consideration of charges and on the date of delivery of

judgment. The petitioner will further undertake that he will not raise the issues before any appellate forum that since the evidence in the case has been recorded in his absence, he has been seriously prejudiced. The petitioner will also accept and will not question the documents supplied or accepted by his learned lawyer in future and will not question in any higher forum regarding non-receipt of any document. If the aforesaid conditions are complied with, the learned ACJM, Bolpur will allow the application under Section 205 of the Code of Criminal Procedure without insisting on the first appearance of the present petitioner.

The aforesaid conditions which have been stated above is in addition to the factum of the learned trial court being empowered to direct the presence of the petitioner in case when he feels that the trial of the case cannot proceed without the physical presence of the present petitioner, in such circumstance, the learned Magistrate would pass a reasoned order for physical appearance of the petitioner.

Thus, the order dated 17.04.2023 so far as it relates to the observations made by the learned Magistrate that the petitioner has not obtained bail till date though the petitioner has entered through his learned advocate, is set aside.

If the petitioner files a fresh application under Section 205 of the Code of Criminal Procedure and appears through his learned advocate narrating the aforesaid undertaking/conditions, the learned Magistrate would allow his presence through advocate.

Accordingly, CRR 2402 of 2023 is disposed of.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)