

06-01-2023  
Subha  
Item no.14

**IN THE HIGH COURT AT CALCUTTA**  
Criminal Miscellaneous Jurisdiction  
Appellate Side

**CRM (SB) 202 of 2022**

**Ajoy Das**  
-vs-  
**The State of West Bengal & Ors.**

**In Re:** An application for cancellation of bail under Section 439(2) Cr.P.C.

Mr. Sandipan Ganguly, Sr. Advocate  
Ms. Priyanka Sarkar

...for the petitioner.

Mr. Shiv Shankar Banerjee  
Ms. Sanchita Barman Roy  
Ms. Pallavi Gogoi

...for the O. P. Nos. 2 to 5.

Mr. Sandip Chakraborty

... for the State.

Affidavit-in-opposition so filed by the opposite party nos. 2,3,4  
& 5 be kept with the record.

Mr. Sandipan Ganguly, learned senior advocate appearing for  
the petitioner draws the attention of this court to the order dated 9<sup>th</sup>  
July, 2021 passed by the learned Additional Chief Judicial Magistrate,  
Bolpur, Birbhum.

Record reflects that the accused persons  
appeared/surrendered before the learned Magistrate by way of a put  
up petition filed on their behalf on the same day. Learned Additional  
Chief Judicial Magistrate, Bolpur observed that the accused persons  
surrendered voluntarily. There was no prayer or steps on the part of  
the Investigating Officer for taking them to custody for the interest of  
the investigation and as the offending sections are triable by the court

of the Magistrate, they be released on bail.

Mr. Sandip Chakraborty, learned advocate appearing for the State was earlier directed to submit a report before this court regarding the observations made by the learned A.C.J.M, Bolpur, Birbhum.

Today a report has been submitted by the Investigating Officer of Bolpur Police Station wherefrom it has been ascertained that the case docket do not reflect regarding the accused persons surrendering before the learned A.C.J.M, Bolpur or any information being sent to the Investigating Officer of the case on 09.07.2021 when the accused persons surrendered before the jurisdictional court.

Mr. Banerjee, learned advocate appearing on behalf of the private opposite parties contends that the petitioner has already approached the civil court with a suit for specific performance. There are observations of the learned Civil Judge in respect of the transactions which have taken place between the parties, the failure of the commitment at the instance of the petitioner and in respect of the consequential steps taken by the accused persons.

I have considered the orders of the learned A. C. J. M, Bolpur which was passed on 09.07.2021 and 10.11.2021 and I find that the initial order was not passed adhering to the settled principles of law, the guidelines set out by the Hon'ble Supreme Court and the convention to be followed while granting bail i.e., the State at least should be afforded one opportunity to present the materials collected, particularly the case diary/case docket.

The said orders were passed for more than one year ago, the

subject matter of the case relates to investigation which are exclusively based on documents, parties have already approached the civil court and there are no allegations that the present accused/opposite parties have misused their liberty while on bail.

Taking into account the same, I am of the view that it would not be prudent to interfere with the order of bail releasing the accused opposite parties. However, the conditions which were imposed when the bail was granted are altered to the extent that the accused/opposite party no. 2, Biswarup Ghosh and accused opposite party no.3, Satarupa Ghosh would furnish bond of Rs.5 lakh each by way of fixed deposit. The said fixed deposit receipts would be renewed by the court from time to time.

Such fixed deposit receipts may be furnished before the learned Additional Chief Judicial Magistrate, Bolpur, Birbhum by 15<sup>th</sup> February, 2023.

If at any point of time, the accused opposite party no.2 and accused opposite party no.3 pray for modification or release of the fixed deposit receipts in such a case, the same should not be considered by the court without giving an opportunity of hearing to the present petitioner.

With the aforesaid observations, the application for bail, being CRM (SB) 202 of 2022 is disposed of.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

[Tirthankar Ghosh, J]

