

19.09.2023.
33.
Ct.No.28.
as

C.R.M. (DB) 3127 of 2023

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

In Re: Suchandrika Sudhansu Das.

Mr. Anirban guha Thakurta,
Mr. Sujan Chatterjee,
Mr. S. Sinha.

...for the Petitioner.

Mr. Abhimanyu Shandilya,
Ms. Simi Paul.

...for the O.P. Nos.2, 3 & 4.

Mr. S. S. Imam,
Mr. S. Kundu.

...for the State.

1. Petitioner has assailed order dated 08.05.2023 passed by the learned Chief Judicial Magistrate, North 24-Paraganas extending interim bail of opposite party No.2-accused on the ground a graver offence under Sections 377/511 IPC was added in the supplementary charge sheet.
2. Learned Advocate for the petitioner contends the Magistrate failed to consider such development in the case and refused to cancel the interim bail.
3. Learned Advocate for opposite party Nos.2, 3 and 4 submits case arises out of a matrimonial dispute. Allegation to commit unnatural offence upon the petitioner was reflected in the FIR itself. Having taken into consideration of such allegation, the accused were released on interim bail. Thereafter, offences under Sections 377 IPC was not included in the charge sheet but subsequently incorporated in the supplementary charge sheet.

This does not change the nature and substratum of the accusation which was already present in the FIR when the Magistrate initially enlarged the opposite party Nos.2 to 4 on bail. There is no misuse of liberty. Hence, the bail order need not be cancelled.

4. Learned Advocate for the State produces the Case Diary.

5. We have considered the materials on record. FIR was registered, inter alia, under Section 377 IPC. Taking into consideration the aforesaid accusation, opposite party Nos.2 to 4 were released on interim bail. The said order came to be challenged before this Court in CRM (DB) 2124 of 2022. Crux of the challenge involved non-disclosure of rejection of pre arrest bail by this Court. In the meantime, charge sheet had been filed deleting offence under Section 377 IPC.

6. Taking into consideration all relevant facts, this Court was not inclined to interfere with the order granting interim bail. Thereafter, petitioner prayed for further investigation before the Magistrate and pursuant thereto, supplementary charge sheet alleging offences under Sections 377/511 IPC came to be filed. In view of this development, petitioner has again sought cancellation of interim bail.

7. It has been rightly argued that learned Magistrate was cognizant of the accusation of committing unnatural offence as per FIR when the initial order granting interim bail was passed. Nature and substratum of the accusation did not alter the submission of the supplementary charge sheet but was an reiteration of the accusations in the FIR itself. This is not a case

where interim bail had been granted when FIR had been registered for attempt to murder after demise of the victim, charge sheet came to be filed under Section 302 IPC changing the substratum and graving of the accusation itself.

8. It may also be relevant to note the offence under Sections 377/511 IPC is triable by Magistrate. The same is sought to be cancelled upon addition of graver offence under Section 302 IPC is added after death of the victim. In such a situation the very substratum and gravity of the accusation changes with the addition of the graver charge. In such circumstances the accused is required to appear and pray for fresh bail or may even be directed to be arrested without cancellation of bail as held in *Pradeep Ram Vs. State* ¹.

9. In view of the aforesaid discussion and as there is no misuse of liberty on behalf of the opposite party No.2/accused, we do not wish to cancel the order of Magistrate extending interim bail.

10. Accordingly, the application for cancellation of bail is dismissed.

(Ajoy Kumar Mukherjee, J.)

(Joymalya Bagchi, J.)

¹ (2019) 17 SCC 326