

22-03-2024
Subha
Item no. 60
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

CRM (SB) 16 of 2024

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

**Arpan Biswas
-Versus-
The State of West Bengal and Ors.**

Mr. Ayan Bhattacharya
Mr. Ayan Basu
Mr. Shounak Mondal
Mr. Suman Majumder
.....for the petitioner.

Mr. Suchindram Bhattacharjee
..for the O. P. Nos. 2 to 5.

Mr. Arijit Ganguly
Ms. Baishakhi Chatterjee
...for the State.

Report submitted by Mr. Ganguly, learned advocate appearing for the State be kept with the record.

Mr. Bhattacharya, learned advocate appearing for the petitioner emphasizes on the legality of the order of bail dated November 2, 2023 and November 3, 2023 which was passed by the learned A. C. J. M, Bongaon wherein opposite parties obtained bail by not divulging that initially an application under Section 438 of the Code of Criminal Procedure was preferred before the learned Sessions Judge which was not pressed. On the second occasion again an application under Section 438 of the Code of Criminal Procedure was preferred and it was dismissed.

I have considered the second order of anticipatory bail which

was dealt with by the learned Sessions Judge-in-Charge, 24 Parganas(N) and I find that the majority part of the order under Section 438 of the Code of Criminal Procedure was the consideration as to whether if an earlier application under Section 438 Cr.PC is not pressed whether the subsequent application is maintainable and in fact the learned Sessions Judge categorically observed that even if the earlier application for anticipatory bail was not disposed of on merits the same do not give a right to the accused persons to file a similar application. This observation of the learned Sessions Judge is not acceptable to this court. However, it was incumbent upon the opposite parties to divulge such information before the learned A.C.J.M, Bongaon.

I have taken into account the put up petition, the surrender petition as well as the bail petition which was filed before the learned A.C.J.M, Bongaon and the totality of the circumstances, as such I am of the view that it was the duty of the accused persons to divulge the information to the court as the learned A.C.J.M, Bongaon was considering the bail without the case diary being placed before him.

In view of the report submitted by the State regarding the list of cases which are inter se pending between the parties both civil and criminal being four in number i.e., Title Suit No. 532 of 2023, Title Suit No. 123 of 2023, Gaighata P.S. Case No. 625 of 2023 and the present case being Gaighata P. S Case No. 627 of 2023, I am of the view that the present petitioner has initiated the instant case pursuant to the earlier two civil cases and the criminal case being registered.

Be that as it may, record also reflects that a relationship exists between the present petitioner and some of the accused persons who have been implicated in the instant case. However, having regard to the observations made above particularly that it was the duty of a litigant to come before a court with clean hands divulging all the circumstances which he has faced, I am of the considered view that the application for bail should be reheard by the learned A.C.J.M, Bongaon. Accordingly, the opposite parties are directed to be present before the learned A.C.J.M, Bongaon on 10th April, 2024.

State is directed to produce the case diary on the said date. Learned Magistrate would rehear the application for bail afresh on perusal of the case diary and deliver his verdict.

Needless to state that this court has restricted itself to the mode and manner in which the opposite party approached the learned A.C.J.M, Bongaon, but has not entered into the merits whether the bail should be granted or bail should not be granted to the petitioner. It is the absolute discretion of the learned A.C.J.M, Bongaon who in the given facts and circumstances of the case will independently express his opinion so far as the issues relating to the bail is concerned in accordance with law.

With the aforesaid observations, the application cancellation of bail being CRM(SB)16 of 2024 is disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

