

02.04.2024.
30.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 669 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection Kulpi P.S. Case No.307 of 2021 dated 04.10.2021 under Sections 302/201/34 of the Indian Penal Code.

In the matter of : **Saifuddin Purkait.**

... Petitioner.

Mr. Santanu Deb Roy,
Mr. Dipankar Guha.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Bitasok Banerjee.

...for the State.

Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Dan.

...for the de-facto complainant.

1. Petitioner is in custody for 105 days. He submits he was on bail earlier. Subsequently, his bail came to be cancelled by this Court in CRM (DB) 1334 of 2022. A learned Single Judge of this Court in CRR 4463 of 2023 stayed the warrant of arrest and directed the petitioner to continue on bail. When he appeared before the trial court, the trial court had illegally taken him into custody. Accordingly, he prays for bail.

2. Learned Advocate for the State opposes the bail prayer.

3. Learned Advocate for the de-facto complainant has filed an affidavit opposing the bail prayer. He contends the

order staying warrant of arrest and directing the petitioner to continue on the same bail was rightly not acted upon the trial Judge as the bail had been cancelled by a Division Bench of this Court in CRM (DB) 1334 of 2022.

4. We have considered the rival submissions of the parties. By order dated 26.09.2022, this Court in CRM (DB) 1334 of 2022 cancelled the bail granted to the petitioner directed as follows:-

“ In view of the aforesaid discussion, impugned order dated 20.4.2022 granting bail to opposite party no.2 is set aside. However bail granted to opposite party nos.3 and 4 are not disturbed.

Opposite party no.2 is directed to forthwith surrender before the court below failing which investigating agency as well as the said court shall resort to appropriate process for his apprehension in accordance with law.”

5. Petitioner did not comply with the order and did not surrender before the trial court. Accordingly, warrant of arrest was issued on 12th December, 2022. Thereafter, proclamation was also issued. Subsequently, petitioner approached the learned Single Judge challenging the warrant of arrest in CRR 4463 of 2023. Without adverting to the fact that the bail had been cancelled by a Division Bench of this Court, learned Single Judge by order dated 01.12.2023 directed the petitioner to surrender before the trial court on or before 20th December, 2023 and further directed the said court to permit the petitioner to continue on the same bail and bond on

condition he met the Inspector-in-charge, Kulpi Police Station until further order. Relevant portion of the order is set out hereinbelow;

“....I direct that in case the petitioner surrenders and appears before the learned Additional District and Sessions Judge, F.T.C., 1st Court, Diamond Harbour, 24-Paraganas (South) on or before 20th December, 2023, the learned trial court will allow the petitioner to continue on the same bail and bond on condition that the petitioner shall meet with the Inspector-in-charge, Kulpi Police Station till further order of modification by the learned trial court. In case the petitioner do not appear before the learned trial court by 20th December, 2023, the learned trial court would exhaust harsher process of law compelling the appearance of the present petitioner.”

6. When the petitioner surrendered before the trial Judge, the said Judge advertent to the order of cancellation dated 26.09.2022 took the petitioner into custody. We are of the opinion stance taken by the trial court is justified. Order dated 01.12.2023 in CRR 4463 of 2023 directing the petitioner to continue on the same bail and bond does not take into consideration the fact that the bail of the petitioner had already been cancelled by a Division Bench of this Court in CRM (DB) 1334 of 2022.

7. Unless the order cancelling the bail was set aside by a superior court, there was no question of reviving the bail granted to the petitioner.

8. Under such circumstances, order dated 01.12.2023 permitting the petitioner to continue on the same bail and bond upon his surrender before the trial court was clearly unenforceable till the cancellation order was set aside.

9. Accordingly, we uphold the order dated 26.09.2022 passed by the trial judge taking the petitioner into custody.

10. On merits, we note after cancellation of bail, petitioner's conduct is reprehensible. Petitioner was fully aware of the fact that he was to forthwith surrender and pray for regular bail. He failed and/or neglected to do so. As a consequence, trial Judge was constrained to issue warrant of arrest against him in December, 2022. Proclamation was also issued. Thereafter, more than a year after his bail was cancelled, petitioner surrendered before the trial court.

11. This shows resorted to various dilatory tactics and absconded after his bail was cancelled. That apart, there are ample materials showing his involvement in the murder.

12. In view of gravity of the offence and his conduct i.e. abscondence for more than a year after his bail came to be cancelled, we are not inclined to enlarge him on bail.

13. Accordingly, the prayer for bail of the petitioner is rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)