

M/L352
05.02.2024
Bpg.

C.R.M.(SB) 49 of 2023

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

Enforcement Directorate
Versus
Shri Romen Agarwal

Mr. Arijit Chakraborty
Mr. Deepak Sharma.
...for the petitioner.

Mr. Milon Mukherjee
Mr. Biswajit Manna
Mr. Riju Ghosh
Mr. Aranyak Saha.
...for the opposite party.

The Enforcement Directorate challenges the Order No. 17 dated 02.02.2023 passed by the learned Judge-in-Charge, Special (CBI) Court No.1, City Sessions Court, Calcutta in M.L. Case No.16 of 2022 arising out of ECIR No. ECIR/KLZO-II/01/2022 dated 06.01.2022.

Mr. Chakraborti, learned advocate appearing for the petitioner/ED in course of his argument has vehemently objected to the reasons assigned in the said order dated 02.02.2023 and the manner in which the judgments have been misinterpreted by the learned special court while releasing the accused/opposite party on bail.

So far as the accused/opposite party is concerned, having regard to the nature of the allegations against him, I am of the view that twin conditions under Section 45 of the PMLA apply in

this case to the present accused/opposite party. However, the accused/opposite party was granted bail on reasons, which are not acceptable under the settled proposition of law. This Court also feels that the accused/opposite party was granted bail by way of assigning reasons which are not acceptable to this Court, so far as offences under PMLA are concerned.

There have been change of circumstances in view of the fact that the accused/opposite party is already on bail for more than a year and during this period there has been no allegations that he has misused his liberty and/or created any impediment in course of the investigation which has taken place while he was on bail.

Mr. Chakraborti, learned advocate appearing for the petitioner/ED has expressed his reservations regarding the manner in which the learned special court has relied upon cryptically on the judgments of the different High Courts for arriving at its conclusion as also the language which has been used for releasing the accused/opposite party on bail.

Exchange of affidavits took place between the parties.

Drawing inspiration from the order passed in Special Leave to Appeal (Crl.) No.3155 of 2022 (Directorate of Enforcement Vs. Bineesh Kodiyeri), I am of the view that it would be harsh step to cancel the bail by virtue of taking into account the bail jurisprudence. As such, the order dated 02.02.2023 is not interfered with. However, the reasons so assigned in the order dated 02.02.2023 by way of which the accused/opposite party was

released will not weigh in respect of the accused persons who are in custody in connection with the instant case or in other words, the order will not operate as a precedent in respect of other accused persons and would be restricted to the petitioner's case.

The accused/opposite party would be physically present on each and every date of the trial fixed by the learned special court until and unless he is able to satisfy the trial court that the situation was beyond his control.

With the aforesaid observations, CRM(SB) 49 of 2023 is disposed of.

Pending connected 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.)