

28 28.03.2024
(AD) Court No.29
(Disposed of)

C.R.M. (DB) 1892 of 2023

In Re: - An application for cancellation of anticipatory bail under Section 439(2) of the Code of Criminal Procedure read with Section 482 of the Code of Criminal Procedure, 1973.
And

In the matter of: - The State of West Bengal
...petitioner.
Mr. Suman De
... for the petitioner-State.
Mr. Amit Roy
Md. Jannat Ul Firdous
... for the opposite parties.

The application for cancellation of anticipatory bail granted by the jurisdictional Court on October 14, 2022 in CrI. Misc. Case No.1663/2022 and CrI. Misc. Case No.1633/2022 arising out of G.R. Case No.1606/2021 is at the behest of the State.

Learned Advocate appearing for the State submits that the police filed charge sheet which includes the two opposite parties as some of the accuseds. The police case involves fraud being perpetuated on the State revenue by the accuseds. The accuseds misrepresented themselves as *bona fide* students entitled to scholarships amounts. The accuseds which include the opposite parties on the basis of such misrepresentation misappropriated State revenue. The nature and extent of the misappropriation and their involvement requires investigation. Although police filed charge sheet, further investigations are in progress. Enlarging the opposite parties before us on anticipatory bail will be inimical to such investigation. He points out that, the High Court did not grant anticipatory bail to other co-accuseds and also refused the prayer for bail of another co-accused.

This application was taken up on the previous occasion when,

we enquired from the learned Advocate for the opposite parties as to whether the opposite parties wished to file any affidavit or not. The learned Advocate appearing for the opposite parties, on instructions, submitted on such occasion that, his clients did not wish to file any affidavit.

We renewed our query to the learned Advocate for the opposite parties today also whereupon, learned Advocate for the opposite parties submits that his clients are not going to use any affidavit. He submits that, charge under Section 409 of the Indian Penal Code, 1860 is not as against the opposite parties. The quantum of money allegedly defalcated or misappropriated is not mentioned.

As noted above, the application is directed against the order dated October 14, 2022 passed by the jurisdictional Court granting anticipatory bail to the private opposite parties. While granting such anticipatory bail, the learned Judge found that charge sheet was submitted and that, some co-accuseds were enjoying bail while other were still absconding. Consequently, he inferred that there was little chance for the trial to commence. Considering such situation, learned Judge thought it prudent that the custodial interrogation of the opposite parties was not required.

With the deepest of respect, filing of charge sheet is not the sole criterion for grant of anticipatory bail. So also is the fact that, co-accuseds were granted bail or some co-accuseds were absconding would not be the relevant criteria. In addition thereto, a Court is required to consider the gravity of the offence and the involvement of the persons seeking anticipatory bail in the crime alleged. Moreover, the Court is required to take into consideration the necessity of a free, fair and transparent investigation and the

impact of a pre-arrest bail thereon.

Defrauding of State exchequer is involved. Materials in the case diary suggest involvement of the opposite parties therein. Apparently, they misrepresented themselves before diverse authorities as persons who are entitled to receive benefits of State largesse. In fact, they received the State largesse. The nature and extent State largesse received by them and their role in facilitating other persons to receive such State benefits requires investigation.

Obviously clothing such persons with protection of pre-arrest bail will not be conducive to a free, fair and transparent investigation.

Learned Judge failed to take into consideration the gravity of the offence and the involvement of the opposite parties in the crimes alleged. Moreover, High Court on two occasions refused to grant anticipatory bail to other co-accuseds and denied grant of bail to one co-accused.

In such circumstances, we cancel the anticipatory bail granted to the opposite parties on October 14, 2022 in CrI. Misc. Case No.1663/2022 and CrI. Misc. Case No.1633/2022.

Opposite parties will surrender before the jurisdictional Court within a fortnight from date. In default, the jurisdictional Court is at liberty to take appropriate steps.

C.R.M. (DB) 1892 of 2023 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)