

03.03.2025
62
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CRM(DB) 2984 of 2023

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

AND

In Re : Susil Chakrabarti Petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Karan Dudwewala
..... for the petitioner

Mrs. Debjani Sahu
..... for the State

Mr. Sabir Ahmed
Mr. Shraman Sarkar
Mr. Dhiman Banerjee
Mr. Tasnim Ahmed
Mr. Quazi Ezaz Ahmed
..... for opposite party no. 2

1. Mr. Sandipan Ganguly for the petitioner challenges order dated 01.07.2023 granting anticipatory bail to opposite party no. 2 on the ground that the said opposite party had appeared before the learned Magistrate on 16.03.2023 and thereafter had escaped from the court. As a result, warrant of arrest was issued. These facts were suppressed before the learned Sessions Judge and the order granting pre-arrest bail was procured. He emphasises once an accused surrenders before the jurisdictional Magistrate, he is arrested and taken into custody by the Magistrate. If he escapes from such custody, prayer for anticipatory bail is not maintainable.

2. Mr. Ahmed for opposite party no. 2 vehemently refutes the aforesaid factual position. He submits his client is pitted against a former Public Prosecutor of the district court. As a result his client had to face severe opposition and obstruction from the lawyer community and on 16.03.2023 due to lawyers' agitation, she was compelled to leave the court premises. Thereafter she applied for anticipatory bail which was granted. The present case was instituted in retaliation to an earlier complaint lodged by the opposite party no. 2 against the petitioner and the allegations are patently absurd and inherently improbable. Present case has also been stayed qua other accused in CRR 4535 of 2022.

3. We have considered the materials on record. Going through the records of the case we note on 16.03.2023 opposite party no. 2 surrendered before the learned Magistrate and prayed for bail. During hearing of the bail application she was not present and warrant of arrest came to be issued. When an accused appears (*colloquially referred to as 'surrender'*) before the learned Magistrate he is arrested and taken into custody by the Magistrate. Thereafter his bail application is considered on merits. Given this situation after the accused has been arrested by the Magistrate and taken into custody there is no scope for the said accused to pray for anticipatory bail. His only remedy lies in seeking regular bail.

4. But Mr. Ahmed argues extraordinary situation prevailed in the court premises. Petitioner is a former Public Prosecutor of the court. Due to his overwhelming influence

there was agitation amongst the lawyers and his client had to run away from the court to save her life. Soon thereafter she lodged a complaint with the Hon'ble the Chief Justice which is annexed at page no. 36 of the affidavit-in-opposition.

5. We have gone through the said complaint. Therein it is contended in November, 2022 opposite party no. 2 had gone to the court to pray for bail but could not do so due to obstruction by members of the local Bar. On 16.03.2023 she again appeared before the jurisdictional Magistrate and the Magistrate had initially granted her bail against bail bond of Rs.1,000/-. But due to threat and intimidation from hundreds of lawyers she ran away from the court and could not furnish bail bond. The aforesaid statements are not supported by contemporaneous documents. With regard to obstruction held out by members of the local Bar in November, 2022, no contemporaneous complaint is placed on record. Even the narration with regard to the events on 16.03.2023 i.e. opposite party no. 2 after her surrender had been released on bail on furnishing bail bond of Rs.1,000/-, is also not supported by the judicial order passed on that day. However, we are not unmindful of the pernicious practice which has gained ground in various local Bars to obstruct litigants whenever they are pitted against the members of the said Bar.

6. Mr. Ahmed rightly argues such unruly behaviour of lawyers denies a litigant of her basic fundamental right to access to justice. Visualizing the situation from these compelling and extraordinary circumstances we fully

appreciate the compulsion which may have compelled the opposite party no. 2 to leave the court premises after she had surrendered before the court and prior to the bail hearing. But the legal consequence of her departure from the court custody prior to the bail hearing is equally telling. It is axiomatic an order of anticipatory bail is triggered upon arrest of an accused and pre-empts his custody by ensuring his immediate release on execution of bond in terms of the order. When an accused has surrendered before the Court and is already in the Court's custody, he cannot be entitled to pray for anticipatory bail after he escapes from such custody albeit for compelling reasons.

7. Under these circumstances, it was open to opposite party no. 2 to assail the warrant of arrest issued against her and seek appropriate orders. There was no scope for her after the judicial arrest to turn the hands of the clock back and seek anticipatory bail. Moreover, these relevant facts touching the jurisdiction of the court to entertain the prayer for anticipatory bail had not been placed before the learned Judge who allowed the prayer. In such view of the matter, we are of the opinion order of anticipatory bail to opposite party no. 2 is without jurisdiction and is liable to be set aside. Consequential orders are also set aside.

8. Opposite party no. 2 is directed to appear before the jurisdictional court and pray for regular bail within a fortnight from date.

9. Secretary, District Legal Services Authority (DLSA) shall ensure opposite party no. 2 is not hindered from access

to justice and/or legal representation of her own choice. In the event anyone including members of the Bar obstructs the opposite party no. 2 and/or her lawyer in appearing before the Magistrate and seeking bail, the opposite party no. 2 and/or Secretary, District Legal Services Authority shall place the matter before the learned Registrar General for initiation of appropriate contempt proceeding against the said individual. While considering the bail prayer the jurisdictional Magistrate shall take into consideration all relevant factors including pendency of case and counter-case between the parties, completion of investigation and that the proceeding has been stayed qua co-accused.

10. This court has taken note of the disturbing state of affairs as portrayed by opposite party no. 2 in the court premises when she appeared before the jurisdictional Magistrate to pray for regular bail. Members of the local Bar had obstructed her and as a result she was compelled to escape from the court resulting in issuance of warrant of arrest.

11. Unfortunately, such unruly behavior by lawyers which is wholly inconsistent with the high ideals of the noble profession has become endemic particularly in the Magistrate courts during bail hearings. The unruly and boisterous behaviour interferes with the smooth administration of justice and an objective adjudication in bail matters.

12. In **Swapnil Tripathi vs. Supreme Court of India**¹ the Apex Court emphasized the need for live streaming of judicial proceedings to enhance accountability of judicial institutions and all those who participate in the judicial process. The Court held as follows :-

“130.....live streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice. Live streaming is a significant instrument of establishing the accountability of other stake holders in the justicing process, including the Bar.

131. For lawyers and Judges familiar with the cocoon of a physical courtroom, live streaming would require attitudinal changes. They include the maintenance of order and sequencing of oral arguments. Judges in charge of their courts would have to devote attention to case management. But these demands are necessary incidents of the challenges of our time.”

13. In **Pradyuman Bisht vs. Union of India and Others**² the Apex Court directed setting up of CCTV cameras in Court premises to enhance court security and maintain public order.

14. Audio visual recording of court proceedings helps to enhance judicial accountability and acts as a filter to lax and irresponsible behavior of stakeholders in the justice delivery system. Audio visual recordings also help the superior courts to assess fact situations better and take appropriate and timely measures against deviant conduct and uphold the rule

¹ (2018) 10 SCC 639

² 2023 SCC OnLine SC 983

of law ensuring unhindered access to justice for all. Given this situation we direct:-

- i) CCTV cameras and other allied devices be installed inside the court rooms of every District and Sessions Judge, Chief Judicial Magistrate and Additional Chief Judicial Magistrate (where bail hearings take place) so as to enhance judicial accountability and ensure smooth and equanimous administration of justice ensuring access to all.
- ii) Judicial proceedings shall be audio visually recorded and recordings shall be preserved in the safe custody of the courts concerned for a reasonable period.
- iii) In the event the Court concerned refers a matter under the Contempt of Courts Act, 1971 it shall forward the preserved recordings of the relevant proceeding for consideration of this Court. This Court may in appropriate cases *suo moto* call for audio visual recordings for inspection and necessary direction for smooth and effective administration of justice.
- iv) In order to address privacy issues the recordings shall not be circulated or exhibited save and except express directions of the court concerned and/or this Court. While issuing such direction the court may direct redaction of relevant footage including blurring of image, modulation of voice etc. to mask identity of victims or other privacy concerns.

15. Let a copy of the order be sent to the Learned Registrar General of this Court and Principal Secretary, Judicial Department, Government of West Bengal for implementation and necessary action.

16. Report be placed before this Court six weeks hence. (16.04.2025)

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)