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C.R.M. (SB) 126 of 2024

In Re: An application for cancellation of bail under Section 439 (2) of the Code of Criminal Procedure, 1973 read with Section 480(5) & 483(3) of BNSS, 2023;

Barsha Ray
Versus
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
Mr. Raja Ray.
...for the petitioner.

Ms. Shaila Afrin
Mr. Mainak Gupta.
...for the State.

Mr. Ranjan Chakraborti.
...for the opposite party nos.2 to 4.

Learned advocate appearing for the petitioner submits that the anticipatory bail application of the petitioners in CRM(A)1459 of 2024 were rejected on 26.04.2024 and thereafter they surrendered before the court and were granted bail by the learned ACJM, 2nd Court, Calcutta on 24.07.2024.

There has been exchange of affidavits. Case diary has also been produced before the court. I find that the subject matter of the investigation related to offences under Sections 498A/406/506/34 of the Indian Penal Code. Once the charge-sheet has already been submitted, it would be the absolute discretion of the learned Magistrate to take into account the changed circumstances. Obviously, a de facto complainant or the person who has set the law into motion or the aggrieved person may have issue regarding the quality of investigation concerned but quality of the investigation and necessity regarding custodial detention are

two different aspects. So far as the issue relating to the factum that an order of anticipatory bail is of binding nature, I am of the opinion that once the accused persons surrendered, the order allowing or rejecting anticipatory bail comes to an end. It is the discretion of the concerned jurisdictional Magistrate or the original court concerned to assess from the materials as to whether custodial detention is called for. In this case, I find that charge-sheet was already submitted. The nature of the offences are all Magistrate triable offences. As such, there was no illegality in the order passed by the learned Magistrate in its order dated 24.07.2024 which was independent of the order of rejection of anticipatory bail. If the petitioner is of the opinion that in course of investigation the investigating officer did not put in efforts for recovery of the stridhan articles, in that case, it would be the liberty of the petitioner to approach the learned Magistrate for further investigation. The period of time which has passed in the meantime do not inspire the Court for any interference in respect of the order dated 24.07.2024.

Accordingly, CRM(SB) 126 of 2024 is dismissed.

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.)

