

In the Matter of : an Application for Bail Under Section 439(2) of the Code of Criminal Procedure Vs. in the Matter of : Dolgobinda Gupta

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Court : Kolkata

Decided On : May-07-2012

Judge : Kanchan Chakraborty

Appeal No. : C.R.M.4341 of 2010

Appellant : In the Matter of : an Application for Bail Under Section 439(2) of the Code of Criminal Procedure

Respondent : In the Matter of : Dolgobinda Gupta

Judgement :

This application for cancellation of bail is pertaining to Burdwan Sadar Police Station Case No.78 of 2010 dated 8.2.2010 under Sections 467/468/471/472/420/406/120B of the I.P.C.

The opposite parties Prabir Kumar Sarkar, Smt. Munmun Som and Sk. Jamal were enlarged on bail by the learned Magistrate on 11.2.2010 and 15.2.2010. The petitioner herein is the defacto complainant, Dolgobinda Gupta has come up with this application for cancellation of bail mainly on the ground that the learned Court should not have passed the bail order in favour of the opposite parties Nos.2, 3 and 4 Considering the nature and gravity of the offences and that the post bail conduct of the opposite parties Nos.2, 3 and 4 are blameworthy for which their bail

should be cancelled.

The Burdwan Sadar Police Station Case No.78 of 2010 dated 8.2.2010 was initiated by Dolgobinda Gupta who lodged a petition of complaint before the learned Chief Judicial Magistrate, Burdwan which was referred to Burdwan P.S. under Section 156(3) of the Cr. P. C. It was alleged therein that the defacto complainant together with the accused persons and the witness No.1 formed a registered Society under the name and style "Joteram Santiniketan". That Society was formed for the purpose of public benefit and social development works. The society also purchased some lands for that purpose. The society was being looked after by the opposite parties as well as Kartick Mondal as Secretary, Cashier and other important office bearers of the Society. They were in custody of all the valuable documents of the Society. Taking that opportunity, they sold some portion of the land of the Society by manufacturing forged deeds for their wrongful gain and wrongful loss to the Society. The opposite parties were brought under arrest before the learned Chief Judicial Magistrate, Burdwan. Upon consideration of the materials on record and upon the submissions of both the sides (Learned A. P. P. raised no objection at that time), the learned Court found it expedient to enlarge the opposite parties on interim bail considering the nature and gravity of the offence.

Apparently, there is no illegality and/or irregularity in the order. Both the orders for bail passed by the learned Chief Judicial Magistrate indicate clearly that the learned Magistrate considered the nature of offence and allegations against the opposite parties and heard both the parties including the learned Assistant Public Prosecutor who raised no objection.

Rejection of bail when bail is applied for is one thing, cancellation is another. Cancellation involves a review of a decision already made and can by and large be permitted only if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

The petitioner herein has taken one ground that post bail conduct of the opposite parties No.2, 3 and 4 is blameworthy. They, after obtaining bail, have been threatening him in different manners of dire consequences. An information to that

effect has been given already by the defacto complainant to the Officer/Inspector-in-charge, Burdwan Sadar Police Station.

Heard Mr. Chatterjee, learned Counsel appearing for the petitioner. He submits that the learned Court should not have granted interim bail considering the nature of offence allegedly committed. He also submits that the bail should be cancelled as the opposite parties No.2, 3 and 4 have been threatening of dire consequences to him in case of his failure for not withdrawing the case.

Heard Mr. Bhattacharyya, learned Counsel appearing on behalf of the opposite parties. He submits that the order itself is not suffering from any illegality. The only information to the Police Station stating therein that the defacto complainant has been threatening is not sufficient enough to curtail the liberty already granted.

Heard Mr. Ghosh, learned Counsel appearing for the State. He submits that this is not a fit case for cancellation of bail.

It is true that the bail can be cancelled where it is shown that a person to whom the concession of bail has been granted is misusing the same by subverting the course of justice. Bail can also be cancelled for not complying with the terms and conditions of the bail order and practising fraud upon the Court.

In the circumstances of the case, there is no such violation of terms and conditions of the order of interim bail. In fact, no condition has been attached to the bail order. It is not the case of the petitioner that the bail was obtained by practising fraud upon the Court. The only information to the Inspector-in-charge of Burdwan Sadar Police Station (Annexure 'F') does not appear to be sufficient enough to establish that the opposite parties have misused the liberty of bail by subverting the course of justice. This fact of information can well be given by anybody at any point of time but carries no weight. Therefore, this Court thinks that this is not a proper case where bail granted can be cancelled.

This apart, the learned Court enlarged the opposite parties on interim bail, which has been challenged in this application. The certified copy of the order dated 28.6.2010 filed by the learned Counsel for the opposite parties shows that the

petitioner had taken out an application for cancellation of bail in the Court of the learned Magistrate itself and the learned Magistrate upon hearing of both the parties as well as the learned Assistant Public Prosecutor found that there was no reason for cancellation of bail. The learned Magistrate passed that elaborate order taking everything into consideration. However, that order was passed long before this application has been taken out by the petitioner. Unfortunately and surprisingly that order has neither been challenged nor has been mentioned in this application. It also appears to this Court that the petitioner has not come with clean hands.

In view of the facts and circumstances above, this Court is of the view that the order of bail passed by the learned Court is not required to be cancelled. The application for cancellation of bail is rejected and disposed of. Affidavit of service filed in Court today be kept with the record.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates of the parties upon compliance of necessary formalities.

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