

Utc Management Pvt. Ltd

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Court : Kolkata

Decided On : Aug-13-2012

Judge : Kanchan Chakraborty

Appeal No. : C.R.M. No. 5261 of 2011

Advocate for Pet/Ap. : Mr. Basu

Judgement :

This application under Section 439(2) of the Cr. P. C. has been filed by U.T.C. Management Pvt. Ltd. praying for cancellation of bail granted to the opposite party No.2 Somnath Mukherjee on 8.6.2011 by the learned Chief Judicial Magistrate, 24-Paraganas, South at Alipore in connection with Chetla Police Station Case No.120 of 2010 dated 9.11.2010.

The petitioner filed a petition of complaint in the Court of the learned Chief Judicial Magistrate, 24-paraganas, South, Alipore on 12.10.2010 against the opposite party No.2, Somnath Mukherjee and one Arif Bashir Iqbal for prosecuting them under Section 406/419/420/468/471/120B of the I.P.C. The said petition of complaint was sent to the local Police Station under Section 156 (3) of the Cr. P. C. by the learned Magistrate and accordingly, Chetla Police Station Case No.120 of 2010 dated 9.11.2010 was started under the abovementioned sections against the two accused persons including the opposite party No.2.

The opposite party no.2 was arrested by the investigating agency and produced before the learned Magistrate on 31.5.2011. On the prayer of the I.O. of the case, he was remanded to police custody initially till 4.6.2011 and thereafter by another order till 8.6.2011. On 8.6.2011, the opposite party No.2 was produced before the learned Magistrate from the police custody by the Investigating Officer who also made a prayer for his police remand till 13.6.2011. The learned granted bail to the opposite party no.2 on 8.6.2011. That order dated 8.6.2011 is the subject matter of this application whereby the petitioner U.T.C. Management Pvt. Ltd. has sought for cancellation mainly on the following grounds;

a) that the learned Magistrate failed to apply its judicial mind and passed the order mechanically;

b) that the learned Magistrate was oblivious of its earlier orders and grounds mentioned therein while granting police remand, but suddenly found that the opposite party no.2 being an old ailing person should be granted bail;

c) that the learned Magistrate was swayed by the submissions of the learned Public Prosecutor who did not oppose the bail rather made some "frank" submissions;

d) that the order passed by the learned Magistrate has caused extreme prejudice to the petitioner who has been blatantly cheated by the opposite party no.2;

e) that the opposite party no.2 failed to comply with the conditions of bail, i.e., meeting the I.O. thrice in a week until further order;

f) that the opposite party no.2 after being enlarged on bail, threatening the Chairman and Managing Director of the U.T.C. Management Pvt. Ltd. over phone with dire consequences.

Heard Mr. Basu and Mr. Chatterjee, learned Counsels for the petitioner. Heard Mr. Ahmed, learned Counsel for the opposite party no.2 and Mr. Chakraborty, learned Counsel for the opposite party/State of West Bengal.

Perused the C.D. meticulously.

The case, as it appears, was initiated by the petitioner putting some direct allegations and aspersions against the opposite party no.2 and the co-accused who allegedly induced the petitioner company to enter into an agreement dated 24.7.2010 for supplying Iron Ore Fines at the go down situated at High Road, Haldia at the rate of Rs.410/- per M.T. The opposite party no.2 and the co-accused made false representation that they belonged to India Mines and Minerals, prepared and manufactured documents to establish their claim and to induce the petitioner company. The petitioner company transferred a sum of Rs.16,40,000/- in the bank account of India Mines and Minerals basing on the agreement dated 24.7.2010. But no such iron ore fines were supplied and ultimately, it was disclosed that the opposite party no.2 and the co-accused had no connection with India Mines and Minerals and the petitioner was defrauded.

The opposite party no.2 was brought under arrest on the strength of warrant of arrest on 31.5.2011. The Investigating Officer of the case prayed for police custody of the opposite party no.2, Somnath Mukherjee till 13.6.2011. The learned Magistrate, upon perusal of the materials on record and in consultation with the C.D., found that there was a strong prima facie case against the opposite party no.2, Somnath Mukherjee to allow police custody till 4.6.2011. On 4.6.2011, Somnath Mukherjee was produced from the police custody by the I.O. and prayed for further police remand. Somnath Mukherjee also prayed for bail on that date. The learned Magistrate considered the entire matter elaborately and found that there were enough materials against the opposite party no.2 and for the sake of investigation, further police remand was required. So, the prayer of the I.O. for further police remand till 8.6.2011 was allowed and the prayer for bail made by Somnath Mukherjee was rejected. The learned Magistrate allowed the police remand for the second time as there was further fair chance of development of investigation by way of collecting materials. On 8.6.2011, Somnath Mukherjee was produced from the police custody as directed by the learned Magistrate and on that date also, the I.O. prayed for further police remand. The opposite party no.2, Somnath Mukherjee also moved an application for bail on that date. The learned Magistrate, on that date, considered the age of the opposite party no.2 and taken note of the fact that Somnath Mukherjee spent a considerable period of time in the police custody resulting in his illness. The learned Magistrate also found that the

case was triable by a Magistrate and Somnath Mukherjee was having a permanent resident so there was least possibility of his absconding. The learned Magistrate heard the learned lawyer appearing for the defacto complainant also on that date. The learned Magistrate heard the learned Public Prosecutor who did not oppose the prayer rather taken side of the opposite party no.2, Somnath Mukherjee by submitting that he was taken in police custody on two occasions and most of the documents have already been recovered and, therefore, his detention was not required. The learned Magistrate considered the submissions of all the parties and accepted the view expressed by the learned Public Prosecutor and granted bail in favour of Somnath Mukherjee on condition that he should meet the Investigating Officer thrice in a week and he should not leave the jurisdiction of the Tallygunge Police Station and the jurisdiction of the Court without prior permission of the Court.

In course of hearing, it was stated that the investigation into the case was completed and the charge sheet was filed already.

Mr. Ahmed, learned Counsel for the opposite party no.2 submitted that the opposite party no.2 complied with the Court's order and met the I.O. thrice in a week till the conditions to the bail were waived by the learned Chief Judicial Magistrate, South, 24- Paraganas, Alipore by order dated 6.7.2011.

Mr. Basu, learned Counsel for the petitioner submitted that the learned Court should not have granted bail when money allegedly defrauded by the opposite party no.2 was not recovered. He contended further that the learned Magistrate ignored its earlier orders wherein the seriousness of offence allegedly committed by Somnath Mukherjee was taken into consideration. But, he contended, while granting bail on 8.6.2011, the learned Magistrate did not consider the nature and gravity of the offence, the huge amount of money involvement and the stage of the investigation. The order was passed mechanically without any application of judicial mind.

On careful appraisal of the orders passed by the learned Court right from the date of first production of the opposite party no.2, it appears to me that the learned Magistrate allowed police remand on the prayer of the I.O. mainly on the ground

that the investigating agency required some informations regarding the alleged transaction and documents allegedly fabricated and manufactured by the opposite party no.2 and the co-accused. In all, the opposite party no.2 was in police custody for 9 days. The learned Magistrate found it sufficient for the investigating agency to unearth the truth and recover or collect necessary documents for the purpose of filing report under Section 173 of the Cr. P. C. It is true that the learned Magistrate considered the gravity and nature of the offence and rejected the bail prayer of Somnath Mukherjee on two occasions. But on 8.6.2011, the learned Magistrate found that there was no reason to keep the opposite party no.2, Somnath Mukherjee behind the bars any further because the investigating agency has already recovered or collected almost all the materials used for committing the alleged offence. Besides, the learned Magistrate considered also that Somnath Mukherjee was an aged man and fell ill while he was in police custody. In fact, he was admitted to nursing home on 8.6.2011 and was discharged therefrom on 14.6.2011. The learned Magistrate, keeping in mind the nature of offence, enlarged the opposite party no.2 on bail but with some stringent conditions. The learned Magistrate directed him to meet the Investigating Officer thrice in a week and not to leave the jurisdiction of the police station as well as the Court without prior permission. That condition was imposed by the learned Magistrate in order to ensure smooth progress in the investigation. The investigation, in fact, was not hampered at all. The opposite party no.2 also co-operated with the investigating agency by meeting the I.O. thrice in a week and not going outside the jurisdiction of Tallygunge Police Station as well as the Court.

It is a case triable by a Magistrate and the offence alleged is not heinous in nature, there is no reason to keep the accused behind the bars. As far as cancellation of bail is concerned, I think that this is not at all a proper case where bail granted can be cancelled. The learned Magistrate had assigned sufficient reasons for granting bail and there is no allegation regarding post bail conduct of the opposite party no.2, Somnath Mukherjee.

That being the factual aspect, this Court finds no reason to cancel the bail as prayed for by the petitioner.

Accordingly, the prayer for cancellation of bail is rejected.

The application for cancellation bail being C.R.M.5261 of 2011 is disposed of. C.D. be returned.

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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