
(2016) 07 CAL CK 0065
In the Calcutta High Court
Case No : C.R.M. 8702 of 2015

In Re Sant Lal Gupta @ Sant Lal Ram Shaw

Date of Decision : 14-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467, 468, 471

Citation : (2016) 4 CalCriLR 475 : (2016) 3 CalCriLR 606 : (2016) 4 CalHCN 728

Hon'ble Judges : Ashim Kumar Roy and Malay Marut Banerjee, JJ.

Bench : Division Bench

Advocate : Mr. Ayan Bhattacharjee, Mr. Ranjit Kumar Basu, Smt. Sreeparna Das, Advocates, for the Petitioner; Mr. Manjit Singh, Ld. P.P, Mr. Partha Pratim Das, Advocate, for the State; Mr. Sandipan Ganguly, Mr. Rudradipta Nandy, Mr. Dipanjan Datta, Advocates, for the

Final Decision : Disposed Off

Judgement

1. The accused opposite party no. 1, 2 and 3 Basanta Lal Gupta, Rohit Gupta and Subrata Roy, who were wanted in connection with Dum Dum Police Station case no. 642 dated 30.06.2015 under sections 420/465/467/468/471/120B IPC, surrendered before the learned Additional Chief Judicial Magistrate, Barrackpore, on July 4, 2015 and prayed for bail. The learned Magistrate allowed their such prayer by making the following order,

" ??? Hd. both sides.

Perused the materials on record. Considered.

Ld. A.P.P. raises no objection to the prayer for bail.

It appears that the offences are triable by this Court and the accused persons have surrendered voluntarily.

So, I do not find any reason for their custodial detention.

Accordingly, the accused persons may find bail of Rs. 1,000/- each with one surety of like amount with condition to co-operate with the I/O i.d. to J/C.

To date."

2. Now, the de facto complainant, the petitioner herein, on September 15, 2015 has approached this court seeking cancellation of such bail.

3. The learned counsel for the petitioner contended, out of the offences involved, the offence punishable under section 467 IPC is punishable with imprisonment for life and therefore, on the face of specific statutory bar contained in section 437 CrPC, the order of granting bail is totally without jurisdiction and illegal. He then invited our attention to the order impugned and vehemently urged no where in the order any reason has been assigned as to why the petitioners were granted bail on the very day of their surrender in the court, nor the order reflected that the materials collected during investigation was considered by the court concerned. He then submitted that it is now well settled that even an order of granting bail can very well be interfered with by the higher court, where such order is patently illegal and without jurisdiction even in absence of adverse post-bail conduct.

4. On the other hand, the learned counsel for the accused/opposite parties first submitted, the bail was granted as far back as in July, 2015. Now, nearly one year after the question of cancelling the bail does not at all call for when there is no allegation that after obtaining bail, the petitioner has misused his liberty in any manner whatsoever. He further submitted all the petitioners are cooperating with the Investigating Officer in every possible way and even the alleged forged power of attorney has been voluntarily produced by them to the Investigating Officer of the case on being requisitioned by him. The said power of attorney was seized on July 11, 2015, two days after the grant of bail. He further submits that whenever the accused petitioners were summoned by the Investigating Officer though immediately responded and reported and every question was put to them that was also to the best of their knowledge answered. He further submitted that this is not a fit case for cancellation of bail at least in the interest of justice.

5. On the other hand, the learned counsel appearing on behalf the State has not disputed that after the bail was granted on July 4, 2015 a subject matter of crime the alleged forged power of attorney was seized by the police on being produced by the accused persons and same has been sent to the handwriting expert for verification and the report has been received showing that the same was a forged one. He lastly added that already investigation is over and charge-sheet has been submitted and therefore, the custodial detention of the petitioner is not needed from the side of the State.

6. Heard the learned counsel appearing on behalf of the parties. Considered their respective submissions. Perused the impugned order.

7. It needs no word to say that the approach of the learned Magistrate was completely wrong, erroneous and illegal. The basic principle governing the jurisdiction conferred on a Magistrate under section 437 CrPC has been completely ignored and infringed.

8. Section 437 CrPC clearly stipulates that no person shall be released on bail, if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Therefore, when considering the question of bail, where one of the alleged offences involved is found to be punishable either with the death or imprisonment for life, the power of Magistrate to grant bail under section 437 CrPC stands completely negated, unless the findings of the Magistrate is contrary. However, in the case at hand not only one of the offences involved under section 467 IPC is punishable with imprisonment for life, the order impugned also does not reflect that on consideration of the materials relating to the case by the learned Magistrate, it appeared to him there were reasonable grounds for believing the accused persons are not guilty of such offence.

9. In the above backdrop, this court is now confronted with a very pertinent question on the face of its unequivocal findings that order impugned is patently illegal and without jurisdiction, still the bail granted to the petitioner about a year back and when the subject matter of the offence a forged power of attorney has been seized by the police on being voluntarily produced by the accused/opposite parties and the opinion of the hand writing expert has already been obtained and when the investigation is closed and charge-sheet has been submitted, whether the bail granted to the accused persons to be cancelled and they be taken into custody?

10. It is well settled even in a case, where alleged offences are non-bailable, the accused persons are not always required to be taken into custody and to detain them there as a matter of course. One of the essential considerations for taking an accused in custody and refuse his bail is to see, whether his detention would logically be necessary for the sake of a proper investigation and his chances of abscondence and tampering with the evidence.

11. This is a case based on the allegation of forgery of the document and such document is now in the custody of the police. Already investigation is over and charge-sheet has been submitted. From the side of the State no apprehension has been disclosed that, if the petitioner is remained on bail, he is likely to abscond and it has been brought to our notice that during the course of investigation the petitioner co-operated with the investigating agency and voluntarily handed over the alleged forged power of attorney.

12. In such circumstances, we are of the opinion that no purpose will be served by taking him into custody. On the other hand, real and substantial justice will be meted out to the parties, which is one of the basic objects of criminal justice delivery system, if the trial of the accused persons is expedited.

13. Accordingly, we are not inclined to interfere with the order of granting bail but so as to ensure the speedy trial, we direct the court below before which charge-sheet has been submitted to proceed with the next stage in the matter and to ensure that the case is matured for the trial in accordance with law within

8 weeks from the next date fixed and to make all efforts to conclude the trial as expeditiously as possible preferably within 6 months thereafter.

14. It is an admitted position the accused/opposite parties are attending court proceeding regularly. Still we direct that they must be present before the court below on each day fixed, unless prevented by justifiable reason.

15. In such a situation the court below shall have the liberty to take the accused/opposite parties in custody in accordance with law.

16. Before parting with, we consider it our duty to emphasise that Presiding Officers of the Criminal Courts disposing of bail matters or any other incidental or connected matters should not take the matters appearing before them in casual manner and they may do well if they remind themselves of the legal position governing the field whereby invitation to unnecessary criticism can be avoided. This line of our observation may be circulated among the Presiding Officers of the Criminal Courts for guidance.

17. This application is accordingly disposed of.