
(2005) 05 CAL CK 0026
In the Calcutta High Court
Case No : C.R.M. No. 2506 of 2005

Monoranjan Jana and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 323, 34, 436

Citation : (2005) 3 CHN 93

Hon'ble Judges : D.P. Sengupta, J; Arun Kumar Bhattacharya, J

Bench : Division Bench

Advocate : Sekhar Bose and G. Guria, for the Appellant; Samir Kr. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

1. Re : An appln. u/s 439 Cr. P.C. filed on 24.3.05 in connection with Nandigram P.S. Case No. 57 of 1994 u/s 323/436/34 IPC.

2. This is an application for bail u/s 439 Cr. PC. FIR was lodged u/s 323/436/34 IPC. On completion of investigation, a final report recommending discharge of the accused persons was submitted by the investigating agency. The learned Magistrate refused to accept such final report and on the basis of a protest petition filed by the complainant, took cognizance of the offence and issued process against the accused persons. The FIR which was initially lodged, was treated as a complaint. The learned Magistrate examined the complainant and his witnesses and took cognizance of the offence. The petitioners prayed for anticipatory bail before the learned Sessions Judge on 3.5.1994 and the said application was allowed and anticipatory bail was granted on 15.6.1994 in their favour. The final report as aforesaid was submitted thereafter. The petitioners surrendered before the learned Magistrate on 9.12.2004 and prayed for regular bail which was rejected by the learned Magistrate and the petitioners were directed to bring bail order from the superior Court. Challenging such order, an

application was filed before the learned Sessions Judge u/s 439 Cr. PC. By the impugned order dated 15.3.2005, the learned Sessions Judge rejected such prayer for bail keeping in view the judgement of the Hon'ble Apex Court reported in Sunita Devi Vs. State of Bihar and Another, in which it was held by the Hon'ble Supreme Court that an application u/s 439 Cr. PC is not maintainable unless the accused persons are in custody.

3. Mr. Bose, learned advocate appearing for the petitioners submit that the petitioners surrendered before the learned Magistrate after anticipatory bail was granted to them. Relying upon the judgement of the Hon'ble Supreme Court reported in Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, , submits that where the accused had appeared and surrendered before the Court, the Court would have jurisdiction to consider the bail application as the accused would be considered to have been in custody within the meaning of Section 439 Cr. PC. Now in the context of Section 439, custody is physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and orders of the Court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its jurisdiction as it was held in the case of Niranjana Singh (supra). In the present case, the petitioners surrendered before the learned Magistrate and prayed for regular bail, the learned Magistrate instead of taking them into custody, directed them to bring order from the higher Court.

4. Therefore, considering the facts and circumstances of the case, materials on record and the meaning of custody as stated above, we are of the view that the petitioners are entitled to be released on bail. Accordingly, we allow the prayer for bail of the present petitioners and direct that the petitioners namely, Monoranjan Jana, Tapas Kumar Panda, Sri Sudarsan Guria, Sri Ashok Kumar Panda, Sri Panchanan Mail @ Mantu Mali, Sri Nantu Das, Sri Babul Das and Sri Mahadev Maity shall be released on bail of Rs. 10,000/- with two sureties of Rs. 5,000/- for each of the accused persons, one of whom must be local to the satisfaction of the learned SDJM, Tamluk. We further direct that after being released on bail, the petitioners shall attend the Committing Court as also the Trial Court on each and every date so fixed by such Court and in case the petitioners fail to appear on any occasion, the Courts below will be at liberty to cancel the bail without any further reference to this Court.

5. The application for bail is accordingly disposed of.