

07.03.2022
tkm/ct 28
sl no. 12

C.R.M. 10682 of 2020

In Re : An application for cancellation of anticipatory bail under section 439 (2) of the Code of Criminal Procedure

And

In Re : Bhajagobinda Roy alias Bhajan Roy petitioner

Mr. Sumanta Ganguly

..... for the petitioners

Mr. S Bardhan

Mr. Shiladitya Banerjee

..... for the State

Mr. Manas Kr. Barman

..... for the OP Nos. 2 & 3

Legal profession is a noble profession. Its members are expected to perform their duties with responsibility and honesty and uphold the high and moral ideals of the profession. The present case is one which exposes the unfortunate and deplorable sharp practices resorted to by a member of the said profession to procure an order of anticipatory bail in favour of his client by misleading the Court by making false submissions that no earlier prayer to an anticipatory bail had been turned down earlier either by the session court or the high court.

Learned counsel appearing for the opposite party nos. 2 and 3 seeking to support the impugned order dated 18.11.2020 granting anticipatory bail to opposite party nos. 2 and 3 strenuously argues that there was no suppression of the material fact and the factum of rejection of the prayer for anticipatory bail in the earlier occasion was set out in paragraph 2 of the affidavit accompanying the application for anticipatory bail. It is also argued no such submission as recorded in the impugned order was made

by the lawyer before the Sessions Court. It is further contended the subsequent prayer for pre-arrest bail was prompted due to non-availability of information and documents at the time of disposal of the earlier application. Hence, the order grants anticipatory bail may not be disturbed.

We have examined the aforesaid submissions made on behalf of the opposite party nos. 2 and 3. Hollowness of the submissions is exposed from the materials on record. In fact subterfuge and/or sharp practice resolved to procure the impugned order of bail is evident from the fact that the pleadings regarding rejection of similar prayer has not been pleaded in the body of the application but is surreptitiously couched in the affidavit accompanying the application so as to avoid judicial scrutiny by the presiding judge. Furthermore, during oral arguments, a brazen incorrect submission was made by the lawyer representing opposite party nos. 2 and 3 that no prayer for anticipatory bail had been turned down by the said court or the high court. Recording of such incorrect submission, sessions court entertained the matter and granted relief to opposite party nos. 2 and 3.

It is contended no such submission had been made before the sessions judge. We are unable to accept such belated and motivated plea.

Had such submission not been made before the court below, the litigant would have promptly made an application before the said court to correct the erroneous recording. No effort was made in that regard. On the other hand, upon obtaining the order of pre-

arrest bail on the strength of misleading and incorrect submission, the opposite party nos. 2 and 3 immediately proceeded to obtain regular bail on the strength of such order. These facts leave no doubt in our mind that the order impugned was procured through fraud and sharp practice. When the very foundation of an order is with fraud, the same is rendered void *ab initio* and ought to be set aside on such ground alone. Even with regard to submission that necessary documents were not available and could not be agitated before the court on the earlier occasion, we are of the view such submission does not justify entertaining a subsequent application for pre-arrest bail. Subsequent application for pre-arrest bail may be entertained by a court only in changed circumstances i.e. when subsequent facts have come into being after the rejection of the earlier application which are exonerative and ameliorative in nature. Plea that the matter could have been better argued on the basis of relevant documents which with due diligence may have been placed before the court on the earlier occasion cannot by any stretch of imagination would give jurisdiction to the court to entertain a subsequent application for similar itself.

It is argued that the dispute is between family members and investigation is complete. As the order impugned has been procured through fraud and suppression of material facts, that is rejection of an earlier prayer for anticipatory bail, the same is void *ab initio* and cannot be salvaged on the aforesaid grounds.

Accordingly, impugned order granting pre-arrest bail to opposite party nos.2 and 3 and the consequential orders of regular bail are cancelled.

Opposite party nos. 2 and 3 are directed to appear before the court below within seven days from date and pray for regular bail in accordance with law. In the event they do so, prayer for regular bail shall be considered independently and in accordance with law. If they fail to do so, the investigating agency and the court below shall take all appropriate steps for apprehending the opposite party nos. 2 and 3 in accordance with law.

CRM 10682 of 2020 is allowed.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)