

D/L2  
04.04.2023  
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C.R.M.(SB) 283 of 2022  
In Re: An application under Section 439(2) of the Code of Criminal  
Procedure, 1973;

X  
Versus  
The State of West Bengal and another

Mr. Apalak Basu,  
Ms. Pritha Bhaumik,  
Mr. Nazir Ahmed.  
...for the petitioner.

Mr. Moyukh Mukherjee,  
Mr. Dulal Chandra Sarkar.  
...for the opposite party no.2.

Mr. Ranabir Roychowdhury,  
Mr. Sandip Chakraborty.  
...for the State.

The subject matter of challenge in the present application relates to the order of bail granted by the learned Chief Metropolitan Magistrate, Calcutta in connection with Cyber Police Station Case No.97 of 2022 dated 10.08.2022.

Attention of the Court is drawn to the order dated 30<sup>th</sup> September, 2022 which reflects that a put up petition was filed by the learned advocate appearing on behalf of the accused, Biswa Ranjan Gouda. Learned Chief Metropolitan Magistrate, Calcutta granted bail to the petitioner on two grounds. Firstly, the public prosecutor did not raise any objection and secondly, notice under Section 41A of Criminal Procedure Code which was served upon the accused was complied with.

Mr. Roy Chowdhury, learned advocate appearing on behalf of the State was questioned regarding the availability of the

case diary on the date so fixed. Learned advocate on instructions from the Investigating Officer submits that the case diary was not produced before the learned Chief Metropolitan Magistrate, Calcutta on the date so fixed.

I am unable to accept the conduct of the public prosecutor raising no objection without the case diary being produced before the court. The public prosecutor are representative of the State, they may have their opinion, but such opinion must be on the foundation of the materials collected by the Investigating Officer and the Investigating Officer must also be aware regarding the materials being produced before the court for assessment when the application for bail of the accused is being considered. No public prosecutor should keep the Investigating Officer in dark and raise no objection when the bail application is being moved.

The learned Chief Metropolitan Magistrate, Calcutta henceforth would, if required, grant interim bail for the purposes of ascertaining the conduct of the accused persons when they surrender before the court and thereafter fix a subsequent date for production of the case diary for confirmation of the bail or refusal of the bail. Without taking into account the materials collected by the Investigating Agency in all cases as a general formula, it would not be prudent upon a court of law to grant permanent bail to all the accused persons.

I have perused the application for cancellation of bail, the affidavit-in-opposition and the affidavit-in-reply filed by the respective parties as also the case diary which has been produced

before this Court. I find that the investigation of the case has already been completed. At this stage, it has been pointed out that further custody of the accused is not required, as such, the prayer for cancellation of bail as made before this Court under the changed circumstances is not required to be interfered with. There are allegations of supervening circumstances being created at the instance of the accused person. However, such supervening circumstances were not brought to the notice of the police authorities or the investigating authorities. Complainant will be at liberty to inform the same to the investigating authorities/police authorities and thereafter bring it to the notice of the learned Magistrate in seisin of the matter.

With the aforesaid observations, CRM (SB) 283 of 2022 disposed of.

Case diary be returned to Mr. Roy Chowdhury, learned advocate appearing for the State.

Investigating Officer of the case is present in Court. However, his further appearance before this Court is dispensed with.

All parties shall act on the server copy of this order duly to the parties upon compliance of all requisite formalities.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**(Tirthankar Ghosh, J.)**

