

29.02.2024
Item No.37
Ct. No. 29
CHC

C.R.M. 1741 of 2021

In Re:- An application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of : Shankar Paul

..... petitioner

Mr. Pawan Kumar Gupta,

Ms. Sofia Nesar,

Mr. Santanu Sett,

Ms. Hakima Khatoon

....for the petitioner

Ms. Sayanti Santra

....for the State

Affidavits filed in Court be taken on record.

Petitioner seeks cancellation of order no.3 dated March 20, 2019 passed by the learned District Judge in Criminal Misc. Case No.464 of 2019 granting anticipatory bail to the private opposite party.

Learned advocate appearing for the petitioner submits that, the private opposite party approached the jurisdictional Court for grant of anticipatory bail by making an application. He refers to such application. He submits that, such application was taken up for consideration by the jurisdictional Court on February 8, 2019 and thereafter on February 15, 2019, February 21, 2019 and ultimately such application was rejected being not pressed on February 27, 2019. He points out that, de facto complainant was present during the first round of the

prayer for anticipatory bail. Thereafter, the private respondent filed an application for anticipatory bail being Criminal Misc. Case No.464 of 2019 where, the impugned order was passed. He draws the attention of the Court to the averments made in paragraph-5 of such application as also the affidavit portion of such application. He submits that, although, the factum of filing of the first application for anticipatory bail was stated, however, the fact that, such application was rejected as not pressed was not alluded to. Attention of the Court granting anticipatory bail by the impugned order was not drawn to such fact. He contends that, once the application was heard-in-part on at least two days, the endorsement of 'not pressed' and the rejection of not pressed by the learned Judge of the first application tantamount to a rejection on merits. Second application for anticipatory bail was not maintainable.

State is represented.

We find from the records that, initially an application for anticipatory bail was filed by the private respondent being Criminal Misc. Case No.203 of 2019 which was rejected as not pressed by an order dated February 27, 2019. The de facto complainant was represented in such proceeding.

Thereafter, the private respondent filed another application for anticipatory bail being Criminal Misc. Case No.464 of 2019 in which the impugned order was passed.

The second application contains an averment with regard to the first application. It also contains an affidavit to the effect that, no application was filed either before the jurisdictional

Court or the High Court and that such application was neither pending nor rejected.

Learned jurisdictional Court proceeded to grant anticipatory bail to the private respondent on the finding that there were elements of civil dispute involved between the private parties.

Such finding of the learned jurisdictional Court is not assailed in this proceeding. What is assailed is the conduct of the private opposite party in suppressing the factum of the rejection of the earlier application for anticipatory bail.

With respect, we are unable to accept such contention of the petitioner before us. While making the second application the private opposite party alluded to the first application and the fact that, it was rejected as not pressed. Merits of the case in the first application was not discussed as transpiring from the orders which are made available on record passed in the first application.

In such circumstances, we find no material irregularity requiring our interference.

C.R.M. 1741 of 2021 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)