

Special (P.O.C.S.O.) 15 / 2024

Order No. 11

15.05.2024

Sole accused on bail namely Sk. Aman is absent and a petition is filed on his behalf praying for time for his appearance. Another petition is filed on behalf of accused praying for extension of interim bail granted to the accused on the ground stated therein.

Ld. Lawyer for the accused and Ld. Special P.P.-in-charge are present. C.D. has been produced.

Today this case is fixed for hearing of prayer of I.O. for cancellation of bail and accordingly, the prayer of I.O. is taken up for hearing.

Heard both sides. Perused prayer of I.O., dated 03.05.2024, C.D. and record. Considered.

Ld. Special P.P.-in-charge submits that on 17.03.2024 at about 6 p.m. the victim girl went out of the house who was aged about 13 years for going to market but she did not return and accordingly, the defacto complainant being her mother lodged complaint with O.C. of Jangipara P.S. and a case was started under sections 363/365 of I.P.C. She further submits that on 02.04.2024 the accused voluntarily surrendered before the Ld. A.C.J.M., Serampore and the Ld. Court granted interim bail to the accused on condition to meet the I.O. once in a week till submission of charge sheet. Subsequently victim girl was recovered and her medico-legal examination was performed which detected commission of offence under sections 4/6 of P.O.C.S.O. Act and section 376(2)(n) of I.P.C. and accordingly the said sections were added by the Ld. A.C.J.M., Serampore on the prayer of I.O. Now, as graver sections have been added, the detention of the accused in custody is required for the purpose of investigation. She prays for cancellation of bail.

Ld. Lawyer for accused submits that order of bail has been granted in favour of accused and as such his bail should not be canceled. He relied on a decision of Hon'ble Supreme Court in Dolat Ram versus State of Haryana reported in 1995 SCC (1) 349.

It appears from the record that on the basis of written complaint lodged by mother of victim girl on 18.03.2024 alleging that she came to know that the accused has forcibly taken away her daughter on 17.03.2024 and the instant case was started under sections 363/365 of I.P.C. It further transpires from the record that on 18.03.2024 the victim girl was produced before the court for recording of her statement under section 164 Cr.P.C. as well as with prayer for her medical examination. It further transpires that on 02.04.2024 the accused surrendered before the Ld. A.C.J.M., Serampore and was granted interim bail of Rs. 1000/- with one registered surety on condition to meet the I.O. once in a week till submission of charge sheet and make himself available before I.O. as and when necessary. It further transpires from order dated 04.04.2024 that I.O. made a prayer for adding section 376(2)(n) of I.P.C. and 4/6 of P.O.C.S.O. Act, which was allowed and the case was transferred to this court as P.O.C.S.O. Act was involved. It appears from the absent petition filed on behalf of the accused that he is unable to attend the court today since he is residing in foreign country in connection with his work. No

document has been produced before the court to establish that the accused has complied with the condition of bail of meeting I.O. once in a week and making himself available before I.O. as and when necessary. The interim bail granted to the accused is liable to be canceled on this ground also. The decision relied on by the Ld. Lawyer for the accused lays down the conditions under which a bail granted to the accused can be canceled. But the fact and circumstances of this case is different in view of the fact that I.O. has made prayer for cancellation of bail on the ground that graver sections have been added in the allegation against the accused. In Pradeep Ram versus State of Jharkhand reported in (2019) 17 SCC 326, the Hon'ble Supreme Court has held that when a graver offence is added, the following procedure for consideration of grant of bail should be adopted:- (i) the accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested. (ii) The investigating agency can seek order from the court under section 437(5) or 439(2) Cr.P.C. for arrest of the accused and his custody. (iii) The court in exercise of power under section 437(5) or 439(2) Cr.P.C. can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under section 437(5) or 439(2) Cr.P.C. can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of canceling the earlier bail. (iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences, it needs to obtain an order to arrest the accused from the court which had granted the bail.

In the instant case the accused obtained bail when F.I.R. was registered under sections 363/365 of I.P.C. Subsequently, on the prayer of I.O. section 376(2)(n) of I.P.C. and 4/6 of P.O.C.S.O. Act were added. The accused did not surrender before the court and prays for fresh bail in view of the aforesaid decision. I.O. has prayed for cancellation of bail. In view of the aforesaid decision, the interim bail granted to the accused is liable to be canceled. The interim bail granted to the accused is liable to be canceled also on the ground that he has violated the conditions of interim bail of meeting the I.O. and making himself available before the I.O. for investigation. Hence, prayer of I.O. for cancellation of bail of accused is allowed. The interim bail of accused Sk. Aman, son of Sk. Jabbar is hereby canceled. Issue warrant of arrest against the accused fixing **28.06.2024** for E.R. Return C.D.

Petitions filed by accused stands rejected.

Dictated & Corrected by me.

Sd/- (Sri M.K. Rai)

Judge, Special Court-cum-
Additional Sessions Judge,
1st Court, Serampore,

Sd/- (Sri M.K. Rai)

Judge, Special Court-cum-
Additional Sessions Judge,
1st Court, Serampore,