

**(2007) 09 GAU CK 0039**

**Gauhati High Court**

**Case No:** None

State of Assam

APPELLANT

Vs

Rajib Bardoloi

RESPONDENT

**Date of Decision:** Sept. 20, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 439(2)
- Penal Code, 1860 (IPC) - Section 409

**Citation:** (2008) 1 GLT 466

**Hon'ble Judges:** Aftab H. Saikia, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

Aftab H. Saikia, J.

Heard Mr. B.B. Gogoi, learned Public Prosecutor appearing for the petitioner, the State of Assam. None appears for the opposite party.

This petition has been filed u/s 439(2) read with Section 401 Cr.P.C. by the State challenging the order dated 27.6.03 passed by this Court in B.A. No. 1653/03 granting anticipatory bail to the respondent in connection with Majuli Police Case No. 32/2003 u/s 409 IPC.

2. As regards cancellation of bail, the Apex Court held as under:

In a case of Bhagirathsingh Judeja Vs. State of Gujarat, the Apex Court clearly observed that for cancellation of bail there must be a very cogent and overwhelming circumstances which were required to be placed on record by the person seeking such cancellation of bail.

3. In paragraph-5 and 6 of Bhagirathsingh Judeja's case (supra) it was held as under:

5...But even where a *prima facie* case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tempering with evidence....

6...Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well settled by a *catena* of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tempering with evidence....

4. In another case of *Raghbir Singh v. State of Bihar* reported in AIR 1987 SC 149, the Supreme Court in paragraph-22 observed as follows:

22...The order for release on bail may however be cancelled u/s 437(5) or Section 439(2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts....

5. It is established that the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tempering with the prosecution witnesses, threatening the family members of the victim and also create problems of law and order situation.

6. However, in the instant application, on perusal of the statements made therein and ground so put forward seeking cancellation of bail of the respondent, the State has taken the strength that the respondent is trying to temper with the evidence of the witnesses in connection with the case and also misuse the liberty so granted by the Court without furnishing any compelling or convincing circumstances in support of such allegations.

7. In view of the above, this Court is of the view that this petition is devoid of any merit and hence the same stands dismissed.