
In Re: Sabyasachi Dutta

C.R.M. 14927 of 2012

Court: Calcutta High Court

Date of Decision: Dec. 18, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 437, 439#Penal Code, 1860 (IPC) â€”
Section 120B, 381, 411

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Sudipto Moitra, Mr. Arindam Jana, Mr. Sanat Kr. Das, Mr. Soubhik Mitter, Mr.
Ranjan Chakraborty and Mr. Amarta Ghosh, for the State, for the Appellant;

Judgement

Kanchan Chakraborty, J.

This is an application for under sub section (2) of Section 439 of the Cr.P.C. praying for cancellation of bail

granted by the learned Chief Judicial Magistrate-in-charge, Birbhum at Suri on 24.7.2012 to the opposite parties No. 2 to 9 in
connection with

Sainthia Police Station Case No. 85 of 2012 dated 6.7.2012 u/s 381/ 120B of the I.P.C. and added Section 411 of the I.P.C. It
would be

convenient to give a short reference to the factual back ground of this application.

2. On 6.7.2012, one F.I.R. was lodged with Sainthia Police Station by Sabyasachi Dutta alleging therein that in his and his inmates
absence from

29.5.2012 to 6.7.2012, their most trusted servant Akshyay Pandey @ Rintu in collusion with other opposite parties committed theft
of huge

amount of golden and platinum ornaments as well as cash money of Rs. 82,000/- by breaking open the iron chest. The opposite
parties No. 2 to 9

were arrested in connection with the case and were taken into police custody also for some days and almost all the stolen
ornaments and money

were recovered from time to time from their custody. The investigation into the case is still going on.

3. On 24.7.2012, all the opposite parties No. 2 to 9 were produced before the learned C.J.M. from Correctional Home. They
prayed for bail.

Upon consideration of the C.D. and materials therein, considering the fact that the opposite parties/accused were local people and there was no

possibility of hampering of investigation into the case and upon submission of the learned Assistant Public Prosecutor that all stolen articles were

recovered already, the learned Chief Judicial Magistrate granted bail to the opposite parties No. 2 to 9 with a condition that they (excepting the

lady accused) should report the I.O. of the case once in a week.

4. The defacto complainant has taken out this application for cancellation of bail on 14th September, 2012, i.e., almost 50 days after passing of the

order by the learned Magistrate mainly on the following grounds;

a) that the learned Magistrate did not apply judicial mind at all and perused the C.D. with attention and passed the order basing on oral submission

of the learned Assistant Public Prosecutor that all stolen articles were recovered;

b) that the learned Court did not consider that the trust of the defacto complainant was betrayed by a man who had been serving for the defacto

complainant for many years and that the way the offence was committed, was no doubt, of serious in nature; and

c) that the post bail conduct of the opposite parties was also blame worthy.

5. Mr. Moitra, learned counsel appearing for the petitioner contended that it is not a case of theft simplicitor but the trust of the defacto

complainant was betrayed by maidservant. Huge amount of golden ornaments and cash money was stolen but little of that stolen articles have been

recovered. The learned Magistrate basing on the submission of the Assistant Public Prosecutor passed the order without applying judicial mind and

scrutinizing the materials in C.D. The order, being defective, is liable to be interfered with. The opposite parties have also threatened the de facto

complainant of dire consequences after being enlarged on bail. Therefore, the bail so granted by the learned Magistrate should be cancelled.

6. Mr. Mitter, learned Counsel appearing for the opposite parties No. 2 to 9 contended that the principles relating to the granting or rejecting of

bail and principles relating to cancellation of bail are quite different. Usually, Court is reluctant to cancel the bail because it is a harsh action on the

part of the Court whereby liberty of a person is curtailed. He submits further that unless there are cogent and overwhelming circumstances, an

order granting bail should not be interfered with. He contended that the offence alleged is an offence of theft simplicitor although the trust of the

defacto complainant was betrayed by a servant. It is not a case of murder or rape or dacoity or culpable homicide or kidnapping. The offences

alleged to have been committed by the opposite parties are not, in true sense, that serious as to keep them behind the bars for a long period. He

contended further that the opposite parties were taken into police custody and thereafter in jail custody. Most of the stolen articles and cash money

was recovered. He contended further that the order of granting bail cannot be categorised as perverse because the learned Court after perusing the

C.D. thought it proper and wise to release the opposite parties on bail.

7. Mr. Ghosh, learned Counsel appearing for the opposite party/State of West Bengal contended that this is not a proper case where bail granted

to the opposite parties is to be cancelled. The Court did not act on the submission of the learned Assistant Public Prosecutor only but also had taken

into consideration some other factors which were important in the matter of granting and refusing bail.

8. The following decisions have been referred to by Mr. Moitra, learned Counsel appearing for the petitioner in support of his contentions;

- a) Subodh Kumar Yadav Vs. State of Bihar and Another,
- b) Purnima Vs. Rambilas and Another etc. etc.,
- c) Rashmi Rekha Thatoi and Another Vs. State of Orissa and Others, and
- d) Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and Another,

9. The order which is subject matter of this hearing is set out below;

Order dated 24.7.2012.

Accd. Akshay Pandey @ Rintu 2) Monoj Mal 3) Bapi Ghosh 4) Sashi Bhusan Pandey 5) Moni Ghosh 6) Malati Pandey 7) Mamata Pandey 8)

Purnima Ghosh are produced from C.H. and remanded to C.H. till 7.8.12 C.D. is produced.

Bail petn. File and moved for the 8 accd. Persons. Hd. Ld. Adv.

Perused the materials on record. C/D is produced. Perused the C.D. Ld. APP submitted that all stolen articles have already been recovered.

Ld. Adv. for the accd. Submits that the accd. Are in custody for a considerable period and they are all local people there is no chance of their

absconder and prayed for bail on humanitarian ground. In my opinion investigation will not be hampered if the accd. Are enlarged on bail at this

stage.

Considering everything the prayer for bail is allowed. The accd. May find interim bail of Rs. 2000/- each in once surety with condition to meet the

I.O. once in a week (except lady accd.) I.D. to J/C.

Return C/D.

10. A bare perusal of the order makes it abundantly clear that the learned Magistrate had taken into consideration of the facts (a) the

petitioners/accused were in custody for a considerable period; (b) that they were all local people; (c) that there was least possibility of their

absconson; d) that there was no possibility also in the matter of hampering of investigation into the case, in case the accused were bailed out and

(e) that the learned Assistant Public Prosecutor raised no objection but contended that all stolen articles were recovered.

11. According to Mr. Moitra, learned Counsel appearing for the petitioner that all stolen articles were not actually recovered on that particular date

when such submission was made by the learned Assistant Public Prosecutor. In such a case, Mr. Moitra contended, it was the duty of the Court to

peruse the materials in C.D. with care and attention, verify the submissions made by the learned Assistant Public Prosecutor and pass the order.

But the learned Magistrate only on the basis of such a submission of the learned Assistant Public Prosecutor, enlarged the petitioners on bail which

was not only defective but a serious defect which vitiates the order.

12. It is needless to mention that the principle governing allowing or rejecting the application for bail are quite different from the principle governing

cancellation of bail granted by Court. In Bhagirathsinh Judeja Vs. State of Gujarat, the Hon"ble Court opined that unless there are very cogent and

overwhelming circumstances, an order granting bail should not be interfered with.

13. In Manjit Prakash and Others Vs. Shobha Devi and Another, and Mehboob Dawood Shaikh Vs. State of Maharashtra, , the Hon"ble Apex

Court also observed that the cancellation of bail is a very harsh order since it takes away the liberty of an individual and should not be lightly

resorted to.

14. In Nityanand Rai Vs. State of Bihar and Another, , it was observed by the Hon"ble Court that the grounds for cancellation of the bail should

be referable to the conduct of the accused while he is on bail.

15. However, it is also opined by the Hon"ble Court in Puran Vs. Rambilas & Anr. (Supra) that when there is an arbitrary and wrong exercise of

discretion in granting of bail by the lower Court, it needs to be corrected keeping in mind the effect of the offence may have on the society.

16. In Subodh Kr. Yadav Vs. State of Bihar & Anr. (Supra), the Hon"ble Court also held for cancellation of bail conduct subsequent to release

on bail are relevant but they are not the only factor. Superior Court has power to cancel the bail if it was granted on irrelevant materials or if there

was non-application of mind.

17. In Rashmi Rekha Thatoi & Anr. Vs. State of Orissa & Ors. (Supra), the Hon"ble Court held that a Court of law has to act within the statutory

command and not deviate from it as the settled proposition of law is that what cannot be done directly, cannot be done indirectly. While exercising

a statutory power, a Court is bound to act within the four corners thereof.

18. In Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu & Anr (Supra), the Hon"ble Court opined that though liberty is greatly cherished value

in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or

liberty of others is jeopardised for the rational collective does not countenance an anti-social or anti-collective act. It was further observed by the

Hon"ble Court that antecedents of the accused is a factor which is to be taken into consideration together with nature of the crime committed and

period of detention while granting bail.

19. I have perused the C.D. produced by Mr. Ghosh, learned Counsel appearing on behalf of the opposite party/State of West Bengal. It contains

as many as 8 seizure lists. A careful perusal of the same unerringly leads to the fact that from the side of the prosecution all efforts were made to

recover the theft articles and the investigating agency was quite successful in doing so because they could recover almost all the stolen articles

including cash money. Apparently, the submission of the learned Assistant Public Prosecutor in the Court of the learned Chief Judicial Magistrate,

Birbhum at Suri cannot be said to be incorrect entirely. However, this fact alone was not sufficient enough for the learned Magistrate to grant bail.

In fact and in substance, the learned Magistrate did not act on such submission of the learned Assistant Public Prosecutor. The learned Magistrate

had gone through the C.D. and the materials therein, considered the period of detention of the opposite parties both in police custody and jail

custody, considered the fact that the opposite parties were residents of the local area and that there was least possibility of their absconsion and no

possibility of hampering in investigation into the case.

20. Therefore, I cannot accept the proposition of Mr. Moitra that only because the learned Assistant Public Prosecutor made a submission, which

was not fully correct, the learned Magistrate passed the order of bail. I reiterate that the learned Magistrate taken other factors, which were more

important than the submission of the learned Assistant Public Prosecutor, into consideration while passing the order. This is one side of the coin.

Another side of the coin is that the application for cancellation of the bail has been filed two months after passing of the order. The accused

persons now enjoying the liberty of bail for about five months. There is no adverse report whatsoever against them from the side of the investigating

officer. It is true that a general diary entry was recorded by the Sainthia Police Station on 10.9.2012 on the basis of information supplied by the

defacto complainant but, that fact alone does not necessarily establish that the opposite parties violated any condition to the bail and interfered into

smooth running of the investigation and actually threatened the witnesses. There is no overwhelming circumstances necessitating cancellation of bail.

21. Mr. Moitra put much stress on the fact that the trust of the defacto complainant was betrayed by the servant i.e. Akshyay Pandey @ Rintu, the

opposite party No. 2. If Akshyay Pandey @ Rintu remains on bail, that would give a wrong message to the society. I can feel the agony of the

defacto complainant expressed through Mr. Moitra. True it is that one person becomes helpless when a person most trusted by him, betrayed him.

This is the way trust is betrayed, be it by a made servant or be it by an inmate or by brother or by any close relation or by friend. The difference is

nothing. The offence alleged was theft simplicitor and not breach of trust. I find that the learned Magistrate taken almost all the factors into

consideration which are required to be considered for exercising power u/s 437 of the Cr.P.C. in the matter of granting bail. The order, in my

estimate, cannot be said to be perverse or that the defects are so serious that it should be interfered with.

22. In this connection a decision of this Court in Superintendent and Remembrancer of Legal Affairs Vs. Amiya Kumar Roy Choudhury alias

Dadaji, can well be referred to. It was held that once an order of bail is granted--even if some defects are found therein, it should not be lightly

interfered with and set aside the same by way of canceling it.

23. In the conspectus and the facts, circumstances and discussions above, I find it inexpedient to curtail the liberty of the opposite parties No. 2 to

9 by way of canceling the bail granted by the learned Magistrate on 24.7.2012.

24. Accordingly, the prayer for cancellation of bail is rejected.

25. The application being C.R.M. 14927 of 2012 is disposed of. Urgent photostat certified copy of this order, if applied for, be given to the

appearing parties upon compliance of necessary formalities.