

(2000) 09 CAL CK 0042

Calcutta High Court

Case No: C.R.M. No. 2756 of 2000

Pankaj Lall Roy

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Sept. 22, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439, 439(2), 482
- Penal Code, 1860 (IPC) - Section 120B, 406, 417, 420, 464

Citation: 105 CWN 627

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: Sekhar Basu and Joymala Bagchi, for the Appellant; S. Moitra and S. Mallick for the State and Ashraf Ali for the Opposite Party No. 2, for the Respondent

Final Decision: Allowed

Judgement

Debiprasad Sengupta, J.

This is an application u/s 439(2) read with Section 482 of the Code of Criminal Procedure against an order dated 24-5-2000 passed by the learned Sessions Judge, Barasat granting interim bail to the accused/opposite party No. 2 in connection with Barasat P.S. Case No. 312 dated 21-5-2000 u/s 406/417/420/464/465/120B of the Indian Penal Code. On the basis of a complaint lodged by the present petitioner the aforesaid case was registered with Barasat Police Station. The petitioner is the Managing Director of the Company namely M/s. Salt Lake Wine-(P) Limited, a Private Limited Company having its place of business at AE Market, Shop No.1, Sector-1 Bidhannagar, Calcutta. The opposite party No. 2 is the registered salesman at the place of business of the petitioner. One of the duties entrusted by the said company to the opposite party No. 2 was the payment of monthly additional licence fees with the department of Excise. On and from 1992 the O.P. No. 2 was entrusted to deposit various fees/charges including literage fees payable to the Excise Department. On

13-5-2000 at about 10.30 a.m. one Inspector of the Excise Department had been to the shop of the petitioner and informed that a huge amount of money to the tune of Rs. 6,40,000/- was not deposited with the Excise Department on behalf of the said company. It was alleged that the opposite party No. 2 in a dishonest and fraudulent manner has criminally misappropriated the money which was handed over to him for depositing with the Excise Department and in this way the O.P. No. 2 misappropriated a sum of Rs. 6,40,000/- for the period 1998-1999 and 1999 February, 2000. In such circumstances the petitioner was compelled to lodge a complaint with Barasat Police Station against the opposite party No. 2.

2. The opposite party No. 2 was arrested and produced before the learned Sub-Divisional Judicial Magistrate, Barasat on 22-5-2000. In the forwarding report the investigating officer prayed for remand of accused to judicial custody on the ground that the investigation of the case was at the initial stage. A prayer for bail was made on behalf of the accused/ O.P. No. 2 and the same was rejected by the learned Magistrate by his order dated 22-5-2000.

3. The accused/opposite party No. 2 in the meantime preferred an application for bail u/s 439 of the Code of Criminal Procedure before the learned Sessions Judge, Barasat. The learned Sessions Judge by his order dated 24-5-2000 granted interim bail to the accused/O.P. No. 2 and fixed 16-8-2000 for confirmation of the said interim bail. Against the said order dated 24-5-2000, granting interim bail to the accused/O.P. No. 2, the petitioner (de facto, complaint) came up before this court.

4. Mr. Sekhar Basu, learned Advocate appearing, for the petitioner submits that the learned Sessions Judge granted interim bail to the accused/O.P. No. 2 without looking into the case diary. Even the learned Sessions Judge did not think it necessary to call for the case diary before passing the impugned order. Mr. Bose submits that the case diary is lying with Barasat police station, which is situated at a short distance from the court of learned Sessions Judge and it was not at all difficult for the learned Sessions Judge to cause the production of the case diary on the same date or on the following date. But instead of doing that he granted bail to the accused without looking into the case diary. Mr. Bose further submits that while granting interim bail to the accused the learned Sessions Judge observed that the complaint was lodged alleging "non-deposit of excise fees etc. which occurred 3 years back." This observation, according to Mr. Bose, indicates total non-application of mind by the learned Sessions Judge in as much as accusation against the O.P. no. 2 is criminal misappropriation/defalcation of excise dues to the tune of Rs. 6,40,000/- for the period 1998-1999 and 1999 to February, 2000. Mr. Bose submits that the order granting interim bail suffers from serious illegality as the said order was passed without looking into the case diary and without considering the gravity of the offence.

5. In support of his contention Mr. Bose relies on a judgment of the Hon"ble Supreme Court reported in [The State Vs. Captain Jagjit Singh](#), . The State vs. Captain

Jagjit Singh. In paragraph 3 of the said Judgment it was held by the Hon"ble Supreme Court as follows: "Where an offence is bailable, bail has to be granted u/s 496 of the Code of Criminal Procedure, but if the offence is not bailable, further considerations arise and the Court has to decide the question of grant of bail in the light of those further considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations, which arise when a Court is asked to admit accused to bail in a non-bailable offence. u/s 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so, where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence." Mr. Bose lays much stress on "nature and seriousness of the offence" and "the character of the evidence" as mentioned by the Hon"ble Apex Court in the aforesaid judgment. According to Mr. Bose any court granting bail to an accused can have satisfaction on these two points only after going through the case diary and not otherwise.

6. The next judgment relied upon by Mr. Bose is reported in 1998 Cal CLR (S.C.) 1. In the said judgment it was held by the Hon"ble Apex Court as follows: "It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. We are therefore of the opinion that the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when investigation is continuing."

7. Mr. Bose next relies on judgment reported in 1996 CCLR (Cal.) 250, Sri Nandan Dutta and Anr. vs. The State of W.B. In the said judgment it was held by a Division Bench of the court as follows: "It is quite settled in law that a bail may be cancelled u/s 439(2) on the ground inter alia that the order granting bail was without jurisdiction, or was made by the Magistrate without applying his mind or upon irrelevant consideration or arbitrarily. In the impugned order we have found that the learned Magistrates granted interim bail to the present petitioner and his wife without considering the incriminating materials standing in the case diary against both of them. Accordingly we cancelled the bail granted to both of them for ends of justice and directed them to surrender before S.D.J.M. Rampurhat forthwith."

8. Relying on the judgments referred to above Mr. Bose submits that the ratio of all those judgments is that among other considerations which the court has to take into account while granting bail to an accused in a non-bailable offence is the nature and gravity of the offence and the character of evidence. It is the submission of Mr. Bose that the learned Sessions Judge granted interim bail to the accused/ opposite party No. 2 without considering these two aspects and as such the order passed by

the learned Sessions Judge suffers from serious illegality.

9. Mr. Asraf Ali, learned Advocate appearing for the accused/opposite party No. 2 submits that when interim bail was granted by the learned Sessions Judge and when the accused/O.P. No. 2 has not misused the liberty granted by the court, bail should not be cancelled by this court. In support of his contention the learned Advocate relies on a judgment reported in 1995 CCLR (SC) 424, Dolat Ram & Ors. vs. State of Haryana. In the said judgment it was held by the Hon"ble Apex Court as follows: The bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

10. I have carefully gone through the judgment of the Hon"ble Supreme Court referred to above and in my opinion the said judgment is not at all applicable in the present case. In the said case anticipatory bail was granted to the accused persons by the learned Additional Sessions Judge in a case of dowry death after going through the police papers and on being satisfied that the accused persons were living separately from the deceased and her husband and the factum of separate residence was supported by the ration cards. The Hon"ble Supreme Court was of the view that these considerations were relevant considerations while dealing with an application for anticipatory bail. Thereafter on an application preferred by the State of Haryana the High Court ground that "dowry death is a serious matter and it cannot be taken so lightly". Appeal was preferred by the accused in Supreme Court. The Hon"ble Supreme Court set aside the order of the High Court and restored the order of the learned Additional Sessions Judge. From a reading of the aforesaid judgment it becomes clear that bail was granted by the learned Additional Sessions Judge on proper application of judicial mind and after going through the police papers and accordingly it was held by the Hon"ble Supreme Court that the materials which were taken into consideration by the learned Additional Sessions Judge while granting anticipatory bail, were relevant for dealing with an application for anticipatory bail. In the present case, as it has already been pointed out, interim bail was granted by the learned Sessions Judge without looking into the case diary.

11. Mr. Sudipto Moitra, learned Additional Public Prosecutor appearing for the State submits that the learned Sessions Judge should have given an opportunity to the prosecution to produce the case diary before granting interim bail to the accused. Mr. Moitra further submits that when interim bail has been granted by the Sessions Judge and when the accused is enjoying the liberty granted by the court for the last 3 months, such interim bail should not be cancelled by this court. But I am unable to accept such submission made by Mr. Moitra. An illegality remains an illegality and it

cannot be made legal simply because it continued for a considerable period. Mr. Moitra in support of this contention relies on a judgment of the Hon"ble Supreme Court reported in 1994(4) Climes 124 SC, Naresh Pal Singh vs. Rajkaran & Anr., from a reading of the said judgment it appears that the High Court granted bail to the accused by accepting the plea of the accused that he was on election duty at the relevant point of time. No attention was focused with regard to the nature of the offence or any other materials. It was held by the Hon"ble Apex Court that such an order, on the fact of it, cannot be sustained. In such circumstances the Hon"ble Apex Court remitted the matter to the High Court for reconsideration. Bail granted by the High Court was not cancelled but the matter was sent back to the High Court for disposal of the bail application afresh after taking into consideration the relevant materials. From a reading of the said judgment it does not appear that the case diary and the materials collected by the Investigating Agency was not produced before the High Court. It is not a case where the High Court granted bail to the accused without taking into consideration the materials collected by the Investigating Agency. Since there was no finding of the High Court with regard to the nature of the offence or any other materials in the order passed by the High Court, the matter was remitted to the High Court for considering the matter afresh. In my considered opinion the present case is completely different from the case referred to above.

12. There is no doubt that normally this court should not interfere with the discretion of the subordinate court when an accused is granted bail by such court. But if there is any reason to hold that there is any wrong exercise of judicial discretion by such subordinate court or that ends of justice is likely to be defeated, it will be proper for this court to cancel the bail granted by such subordinate court.

13. In the present case accused was arrested on 21-5-2000 and was produced before the learned S.D.J.M., Barasat on 22-5-2000, when his prayer for bail was rejected by the learned Magistrate. On 24-5-2000 an. application for bail was moved before the learned Sessions Judge, and the learned Sessions Judge without even calling for the case diary granted interim bail to the accused with some observations which is not at all correct. It appears from the order of the learned S.D.J.M. that while rejecting the prayer for bail of the accused he took into consideration the FIR, the forwarding report of the investigating officer, seizure list etc. and considering the case to be of a serious nature he refused the prayer for bail. I fail to understand what prevented the learned Sessions Judge to call for the records from the court of the learned Magistrate. On 24-5-2000 interim bail was granted by the learned Sessions Judge till 16-8-2000, i.e., for about 3 months. It is submitted by the learned Advocate of the petitioner that on 16-8-2000 such interim bail was again extended till the month of December, 2000. In my opinion granting of interim bail for such a long period and again extending the same for such a long period of 4 months is also not desirable.

14. Investigation in the case commenced on and from 21-5-2000. Only three days thereafter the accused was granted bail by the learned Sessions Judge and that too without looking into the case diary. The learned Judge even did not feel it necessary to call the case diary before granting bail, although Barasat police station is at a distance of 5 minutes walk from the court of the learned Sessions Judge. This, in my opinion, is a wrong exercise of judicial discretion. I have carefully gone through the First Information Report and other connected papers which are annexed to the present application. In my considered opinion the allegations made in the FIR are very serious and this is not a case in which bail can be granted within three days from the registration of the case and that too without looking into the case diary and without considering the grave nature of the offence.

15. In view of the discussion made above I allow the present application, set aside the impugned order dated 24-5-2000 passed by the learned Sessions Judge, Barasat and cancel the bail granted to the accused/opposite party No. 2. The accused/opposite party No. 2 is directed to surrender before the learned Sub-Divisional Judicial Magistrate, Barasat within 7 days from date and on such surrender the learned Magistrate shall take him into judicial custody. I also make it clear that in case the accused fails to comply with the direction of this court, the learned Magistrate shall take appropriate steps for his apprehension and remand to judicial custody. The accused/Opposite Party No. 2 will be at liberty to pray for bail and if any such prayer for bail is made, the learned Magistrate will dispose of the same after taking into consideration the materials collected by the investigating agency. Application allowed. Bail cancelled.