

(2014) 06 CAL CK 0059

Calcutta High Court

Case No: C.R.R. No. 549 of 2014

Himadri Dey

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 5, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 397, 439(2), 482

Citation: (2014) 3 CHN 495**Hon'ble Judges:** Ranjit Kumar Bag, J**Bench:** Single Bench

Advocate: Nisith Nandan Adhikary, Sanjib Mukhopadhyay, Sunirmal Khanra and Kalpita Paul, Advocate for the Appellant; Rabi Sankar Chattopadhyay, Udyay Sankar Chattopadhyay and Amarta Ghose, Advocate for the Respondent

Judgement

R.K. Bag, J.

Leave is granted to learned Counsel for the petitioners to amend the cause title of the application for criminal revision for the purpose of deleting the entries made in the cause title to the effect "An application under Article 227 of the Constitution of India" in course of this day. The petitioners have preferred this criminal revision challenging the order No. 13 dated 6.2.2014 passed by the learned Sessions Judge, Cooch Behar in Criminal Misc. Case 1710 of 2013 by which the learned Sessions Judge cancelled the bail granted to the petitioners on 5.8.2013, and the said order of bail was cancelled by the learned Sessions Judge under section 439(2) of the Code of Criminal Procedure, 1973 even when the petitioners did not violate any condition of bail and did not misuse the liberty granted to them by the learned Chief Judicial Magistrate, Cooch Behar.

2. According to Mr. Nisith Nandan Adhikary, the reasons assigned by the learned Sessions Judge for cancellation of bail are not germane to the provision of section

439(2) of the Code of Criminal Procedure, 1973. Mr. Adhikary has also pointed out that the learned Magistrate had taken into consideration that the names of the petitioners were not reflected in the Certification of Incorporation of the Company as the Directors during the period of the transaction involved in the criminal case. Mr. Adhikary thus submits that the order of cancellation of bail passed by the learned Sessions Judge cannot sustain in law.

3. Mr. Ghose, the learned Counsel appearing on behalf of the O.P/State submits that the order of cancellation of bail passed by the learned Sessions Judge under section 439(2) of the Code of Criminal Procedure may be construed as an order passed by the Revisional Court under section 397 of the Code of Criminal Procedure, 1973. Relying on the decision of the Division Bench of this High Court in the case of "Maya Majumder v. State of West Bengal" (CRM No. 15140/12 decided on 12.8.13), Mr. Ghose contends that the order of bail may be cancelled if irrelevant facts were taken into consideration and relevant facts were ignored at the time of granting bail to the accused person. Mr. Ghosh has also pointed out that there is contradiction in the orders dated 3.8.13 and 5.8.13 passed by the learned Chief Judicial Magistrate in deciding the application for bail of the petitioners. Mr. Ghose also submits that there was need of custodial interrogation of the petitioners in order to discover the facts involved in the case, and as such, the matter should be left to the discretion of the learned Magistrate to decide afresh whether bail should be granted to the petitioners by upholding the order passed by the learned Sessions Judge.

4. Mr. Rabi Sankar Chattopadhyay, the learned Counsel appearing on behalf of the opposite party. No. 2 contends that the learned Sessions Judge has rightly cancelled the order of bail granted by the learned Magistrate in mechanical manner without any application, of mind. Mr. Chattopadhyay also submits that the learned Magistrate did not assign any reason at the time of granting bail to the petitioner and passed contradictory orders. According to Mr. Chattopadhyay, the huge amount of money is involved in this case and there is every possibility of hampering the fair trial if the petitioners remain on bail. Mr. Chattopadhyay has relied on the decisions reported in [Puran Vs. Rambilas and Another etc. etc.](#), and [Central Bureau of Investigation Vs. V. Vijay Sai Reddy](#), in order to put forward the argument that the order passed by the learned Sessions Judge is sustainable in law.

5. On perusal of the orders dated 3.8.13 and 5.8.13 passed by the learned Chief Judicial Magistrate, Cooch Behar I find that the learned Magistrate gave direction to the Superintendent of Cooch Behar District Correctional Home on 3.8.13 for providing proper medical facilities to the petitioner No. 2 as the petitioner No. 2 needed medical treatment. It further appears from the order dated 5.8.13 that the learned Magistrate perused the case diary, considered the ground put forward by the petitioner No. 2 and granted him bail, though the case diary did not contain materials about certificate of incorporation of the Company. Subsequently, on the same date the investigating officer produced the certificate of incorporation of the

company and on consideration of the fact that the names of the other two petitioners were not reflected in the Certificate of Incorporation of the Company or Directors, granted bail in favour of the remaining two petitioners.

6. It is pertinent to rely on the proposition of law laid down by the Supreme Court of India for cancellation of bail in the case of [Aslam Babalal Desai Vs. State of Maharashtra](#), and in the case of [Dolat Ram and Others Vs. State of Haryana](#), and also in the case of "Suvendu Mishra v. Subrata Kukar Majumder" reported in 2000 SC 1508. The proposition of law laid down by the Apex Court in the above decisions is that once bail is granted in favour of the accused persons, the bail 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. The Court cannot overlook 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.

7. The grounds for cancellation of bail have been enumerated as follows:

"(i) Misuse of liberty by the accused by indulging in similar criminal activity;

(ii) Interference with the course of investigation;

(iii) Attempt to tamper with evidence of witnesses;

(iv) Threatening witnesses or indulging in similar activities which would hamper smooth investigation;

(v) Likelihood of fleeing away of the accused to another country;

(vi) Attempt to make the accused scarce by going underground or becoming non-available to the investigating agency;

(vii) Attempt to place himself beyond the reach of his surety etc."

8. On perusal of the impugned order passed by the learned Sessions Judge for cancellation bail of the petitioners, I do not find that the petitioners misused the liberty granted to them by the learned Magistrate or interfered with the course of investigation or attempted to tamper with the evidence or threatened the witnesses or indulged in similar criminal activities which would hamper smooth progress of investigation. Nor can I persuade myself to find out from the order passed by the learned Sessions Judge that there is likelihood of fleeing away of the petitioners from the clutches of law.

9. The learned Sessions Judge cancelled the bail granted by the learned Magistrate by observing that the bail was granted ignoring relevant materials indicating prima facie involvement of the accused persons and taking into account the irrelevant materials which have no relevance to the question of grant of bail to the accused persons. However, the learned Sessions Judge has not pointed out anywhere in the

order what relevant materials have been ignored by the learned Magistrate and what irrelevant materials have been taken into consideration by the learned Magistrate for the purpose of granting bail. In this context it is relevant to discuss the decisions cited from the Bar.

10. The proposition of law laid down by the Division Bench of our High Court in the case of "Maya Majumder v. State of West Bengal" (CRM No, 15140/12 decided on 12.8.13) is that the bail granted on consideration of irrelevant facts and materials is liable to be cancelled and that post bail conduct of the accused does not call for cancellation of the bail.

11. In the case at hand the learned Sessions Judge has not pointed out anywhere in the order what irrelevant facts and materials have been taken into consideration by the learned Magistrate for the propose of granting bail. Nor did learned Sessions Judge take into consideration the post bail conduct of the accused persons, though, according to our High Court that does not call for cancellation of bail. So, the decision of the Division Bench cited by Mr., Ghose is not relevant in deciding the instant case.

12. The proposition of law laid down in [Puran Vs. Rambilas and Another etc. etc.](#), is that "under section 439(2) the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court in the interest of justice to interfere."

13. When the learned Magistrate passed the order of bail on consideration of the materials available in the case diary in general and statements of the witnesses recorded under section 161 of the Code of Criminal Procedure in particular and also on consideration of the fact that the names of the petitioners were not reflected in the Certificate of Incorporation of the Company as Director at the relevant point of time, I am unable to persuade myself to hold that the order of granting bail is vitiated by any serious infirmity for which the bail was liable to be cancelled by the learned Sessions Judge under section 439(2) of the Code of Criminal Procedure. The law laid down by the Supreme Court in [Central Bureau of Investigation Vs. V. Vijay Sai Reddy](#), is as follows:

"28. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie

evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

14. By applying the above test for cancellation of bail, I am of the view that the learned Sessions Judge illegally cancelled the bail granted in favour of the petitioners by the learned Magistrate.

15. Since it is submitted from the Bar that the investigation is still in progress and there is need of interrogation of the petitioners for the purpose of full discovery of facts and since this Court is exercising jurisdiction under section 482 of the Cr.P.C., I am inclined to modify the order of bail granted by the learned Magistrate by setting aside the order passed by the learned Sessions Judge.

16. In view of the above findings, the order dated 6.2.14 passed by the learned Sessions Judge, Cooch Behar in Criminal Misc. Case No. 1710/13 is set aside and the order dated 5.8.13 passed the learned Chief Judicial Magistrate, Cooch Behar in GR Case No. 331/13 is modified as follows: -

"i) the petitioners will meet the investigating officer of the case twice in a week and also when demanded by the investigating officer for the sake of investigation; and

ii) the petitioners will not leave the territorial jurisdiction of the District of Cooch Behar without the permission of the investigating officer till completion of investigation."

17. The Criminal Revision is, thus, disposed of.

18. The department is directed to send a copy of this order to the learned Court below for necessary action. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.