courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 30/10/2025

Rima Saha (Bit) Vs The State of West Bengal and Another

CRM No. 4056 of 2011

Court: Calcutta High Court

Date of Decision: June 22, 2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 438, 439(2)#Dowry Prohibition Act, 1961 â€" Section 3, 4#Penal Code, 1860 (IPC) â€" Section 34, 406, 498A

Citation: (2011) 06 CAL CK 0089

Hon'ble Judges: Kalidas Mukherjee, J

Bench: Single Bench

Advocate: Manjit Singh, Anand Keshari and Pawan Kumar Gupta, for the Appellant;Subhasish Pachhal, for State, Rana Mukherjee and Jaladhi Das for Opp. no. 2, for the Respondent

Final Decision: Allowed

Judgement

Kalidas Mukherjee, J.
This is an application for cancellation of bail u/s 439(2) of the Code of Criminal Procedure. The case was instituted

by the de facto complainant u/s 498A/406/34 IPC and 3 & 4 of the Dowry Prohibition Act, being BGR Case No. 256/2011 now pending before

the Learned Additional Chief Judicial Magistrate, Alipore. It is the contention of the Petitioner/de facto complainant that an application u/s 438 of

the Code of Criminal Procedure was filed by the OP No. 2 herein along with his mother before the Learned Sessions Judge, Alipore which was

registered as Criminal Misc Case No. 766/2011. The said Misc Case was fixed for hearing on 11.02.2011. The said application was rejected

being not pressed by the Learned Advocate of the Opposite Party No. 2 and his mother.

2. By suppressing the fact of rejection of the said application, the Opposite Party No. 2 and his mother filed another application u/s 438 of the

Code of Criminal Procedure bearing Criminal Misc Case No. 1217/2011 and the same was also rejected being not pressed on 14.03.2011. By

suppressing that fact, the Opposite Party No. 2 herein filed another application u/s 438 of the Code of Criminal Procedure bearing Criminal Misc

Case No. 2611/2011 and the same was also rejected being not pressed. By suppressing the fact of rejection of the three applications u/s 438 of

the Code of Criminal Procedure, the Opposite Party No. 2 filed a put up petition with an application for bail by surrendering in the Court of the

Learned Additional Chief Judicial Magistrate, Alipore on 26.04.2011.

3. In the application for bail the Opposite Party No. 2 did not state that his three applications u/s 438 of the Code of Criminal Procedure had been

rejected being not pressed by the Learned Sessions Judge, Alipore. It is the contention of the Petitioner that the Learned Additional Chief Judicial

Magistrate, Alipore in a very casual manner granted interim bail without even hearing the Learned Assistant Public Prosecutor. It is contended that

the said order was passed in a mechanical way by the Learned Magistrate and there was no application of judicial mind. It is submitted that the

Opposite Party No. 2 by practising fraud upon the Learned Court obtained the order of bail. It has been stated in the application that the Opposite

Party No. 2 not only practiced fraud upon the Court but also threatened the Petitioner with dire consequences and also assaulted and abused her.

The Petitioner finding no other way lodged a G.D. with the local Police Station on 08.04.2011 and on 10.04.2011. The Opposite Party No. 2

obtained the benefit by practising fraud upon the Court. The Petitioner was seriously prejudiced by the said order dated 26.04.2011 passed by the

Learned Additional Chief Judicial Magistrate, Alipore. Under such circumstances, the Petitioner herein has filed the instant application for

cancellation of bail u/s 439(2) Cr.P.C.

4. The Learned Counsel appearing for the Petitioner submits that the OP No. 2 herein suppressed the material facts in the application for surrender

with the prayer for bail which was filed before the Learned Additional Chief Judicial Magistrate.

5. It is contended that because of the suppression of material facts regarding the earlier rejection of the prayers for anticipatory bail being not

pressed, the interim bail granted by the Learned Additional Chief Judicial Magistrate should be cancelled. It is further contended that the record

was put up on petition filed by the accused /OP No. 2 herein and the Learned Court below without hearing the Learned APP was pleased to grant

interim bail. The Learned Counsel has referred to and cited the decisions reported in 2010 (2) Cri. 118 Pamela Sarkar v. State of West Bengal

and Anr. (2008)2 Cri. LR 97 Shri T.K. Dutta Vs. Pawan Kumar Didwani and Another,

6. The Learned Counsel appearing for the state submits that the interim bail has not yet been confirmed. It is further contended that since interim

bail was granted no illegality was committed by the Learned Magistrate.

7. The Learned Counsel appearing for the OP No. 2 herein submits that in the second application u/s 438 of the Code of Criminal Procedure, the

fact of earlier rejection of similar application being not pressed was not stated and, as such, the second application was also not pressed. It is

further contended that similarly in the third application u/s 438 Code of Criminal Procedure the earlier rejection was not stated and, as such, the

third application u/s 438 of Code of Criminal Procedure was also not pressed. It is contended that the OP No. 2 herein is not the beneficiary of

order and the Learned Magistrate by granting interim bail did not commit any illegality. The Learned Counsel has referred to and cited the decision

reported in (1992) 4 SCC 290 Aslam Babalal Desai v. State of Maharashtra (para 11).

8. It is true that the Interim Bail granted by the Learned Sessions Judge has not yet been confirmed upon hearing both sides. The Learned

Magistrate while granting Interim Bail on 26.04.2011 did not hear Learned APP. In view of put up petition for surrender with the prayer for bail

the Learned Magistrate ought to have heard the Learned APP.

9. It is clear that in the surrender petition with the prayer for bail, the OP No. 2 herein did not disclose that earlier three applications u/s 438 of the

Code of Criminal Procedure were rejected by the Learned Magistrate as the same were not pressed. The non-disclosure of the said fact in the

petition for surrender with a prayer for bail is very material, in as much as, the Learned Magistrate while granting interim bail could not take note of

that fact. The non-disclosure of the said fact also had bearing upon the order of granting interim bail passed by the Learned Magistrate.

10. The Learned Counsel appearing for the Petitioner has referred to and cited the case of Pamela Sarkar v. State of West Bengal and Anr.

(supra) wherein the earlier application u/s 438 of the Code of Criminal Procedure was rejected as not pressed and subsequently the second

application u/s 438 Code of Criminal Procedure was filed suppressing the earlier fact of rejection of such application. It was also held that the OP

No. 2 himself stated in affidavit before the Learned Trial Court that no application u/s 438 of the Code of Criminal Procedure was filed by him

earlier. Under such circumstances the application for cancellation of bail was allowed.

11. In the case of Shri T.K. Dutta Vs. Pawan Kumar Didwani and Another, the bail was cancelled in view of the fact that the accused obtained

bail by practising fraud on Court. In the aforesaid case it has been held in para 11 as follows;

...The Opposite - Party No. 1 accused clearly, therefore, had obtained the aforesaid order of bail dated 10th May, 1993 on the aforesaid false

/frivolous plea taken in his aforesaid fresh application filed on 10th May, 1993, and on the said submissions made before the Court on his behalf,

which was nothing short of practising fraud upon the Court for obtaining the said Order.

12. In para 12 of the aforesaid decision it has further been held as follows;

...Even so, we would feel inclined to cancel the bail granted to him by the aforesaid Order dated 10th May, 1993 since he had obtained the said

order on false /frivolous plea as to the illness alleged, by practising fraud upon the Court, for the reasons amply and appallingly made clear above,

so that it may serve as a lesson for all concerned, and also for upholding and maintaining the dignity of the Court and sanctity of the orders passed

by it.

13. Because of the non disclosure of such material facts, the Learned Magistrate having regard to the fact of institution of the matrimonial suit

granted interim bail. I have already held that the Learned Magistrate ought to have heard the prosecution while passing the order for interim bail.

14. The Learned Counsel for the OP No. 2 has referred to and cited the decision reported in Aslam Babalal Desai Vs. State of Maharashtra,

wherein it has been held in para 40 as follows;

...The grounds for cancellation of the bail in Chapter XXXIII are, dehorns the merits in the matter, namely necessity due to the conduct of the

accused and abuse of liberty i.e. obstruction of the smooth investigation or suborning witnesses or attempting to tamper the evidence, threatening

the witnesses with dire consequences or making or attempting to remove himself beyond the reach of the court to hamper the smooth trial, etc. are

independent of the merits in the matter. Cancellation of bail would be necessitated by the conduct of the accused himself after the release....

15. In the instant case it is not the question of conduct of the accused persons after the release on bail. But it is a case of suppression of material

facts at the time of obtaining the order of bail from the learned Court below. Under such circumstances the decision cited by the Learned Counsel

for the OP No. 2 would not come in the aid of his contention.

16. In view of the circumstances aforesaid, I find that it is a fit case for cancellation of bail. Accordingly, the interim bail granted by the Learned

Additional Chief Judicial Magistrate, Alipore on 26.04.2011 is hereby cancelled. The Petitioner herein is directed to surrender before the Learned

Magistrate. Upon such surrender, if any application for bail is filed by the O.P. No. 2 herein, the Learned Magistrate will dispose of the same

according to law after hearing both sides.

17. The application is thus allowed.

18. Let a copy of this order be sent to the Learned Court below immediately.

19. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.