

GAHC040003612023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.M.Appln./1/2023

Rina Sonam
Enquiry Officer, CB PS ENQ. No. 08 (11)/2022, Crime Branch Police Station,
Itanagar, Arunachal Pradesh.

VERSUS

Partha Pratim Bharadwaj
Son of Late Nitya Nanda Sharma,
Resident of Sarvadaya Nagar, Chandmari, Guwahati, Kamrup District, Assam.

Advocate for the Petitioner : J Tsering

Advocate for the Respondent : 1 A Bhattacharya

BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.09.2023

Heard Mr. J. Tsering, learned Special Public Prosecutor appearing for the petitioner and also heard Mr. A. Bhattacharya, learned counsel for the respondent.

1. This is an application under Sub-section 2 of Section 439 read with Section 482 Cr.P.C, praying for cancellation of the anticipatory bail granted to the respondent by this Court vide order dated 08.12.2022 in connection with Enquiry No. C/W CB-PS ENQ. No. 08(11)/2022.

2. The Case of the petitioner is that the applicant herein is the Enquiry Officer of CB-PS ENQ. No. 08(11)/2022, Crime Branch Police Station, Itanagar, Arunachal Pradesh and the respondent is a suspect therein. An enquiry, being CB-PS ENQ. No. 08(11)/2022 was initiated by the Crime Branch Police Station, Itanagar and the respondent was directed to appear before the Crime Branch Police Station, Itanagar to participate in the enquiry. On being summoned, the respondent approached this Court seeking pre-arrest bail in connection with the aforesaid enquiry and accordingly, vide the impugned order he was granted pre-arrest bail but he did not appear before the Enquiry Officer as per the order of this Court. Hence, the applicant has preferred this petition for cancellation of the order dated 08.12.2022.

3. It is submitted by Mr. J. Tsering, the learned Special Public Prosecutor that as per the order dated 08.12.2022, the respondent was directed to appear before the Officer-In-Charge, Crime Branch Police Station (SIT), Itanagar Police Headquarters, Itanagar, Arunachal Pradesh on 15.12.2022 but he did not appear before the Enquiry Officer by violating the order of this Court. It is further submitted that since his release on pre-arrest bail, the respondent has refused to comply with the terms and conditions enumerated in the order of this Court dated

08.12.2022. The respondent was refusing to co-operate and participate in the investigation despite repeated notices. The last intimation, by a WT message dated 08.03.2023 through the Officer-In-Charge, Chandmari Police Station, Assam, seeking his appearance before the Officer-In-Charge, Crime Branch Police Station (SIT), Itanagar has been ignored as well.

4. The learned Special Public Prosecutor Mr. Tsering pointed out that the Hon'ble Apex Court has repeatedly expounded that bail granted to an individual can be cancelled by invoking Sub-section 5 of Section 437 or Sub-section 2 of Section 439 Cr.P.C, where the accused misuses his liberty indulging in similar criminal activity, interferes with the course of investigation, attempts to tamper with evidence or witnesses and indulges in similar activities which would hamper smooth investigation.

5. In support of his submissions, the learned Special Public Prosectuor has relied on some case laws-

***(i) Mahipal vs. Rajesh Kumar @ Polia & Anr*, reported in *(2020) 2 SCC 118*.**

***(ii) Dolat Ram vs. State of Haryana* reported in *(1995) 1 SCC 349*.**

***(iii) Aslam Babalai Desai vs. State of Maharastra* reported in *(1993) 4 SCC 272*.**

6. In response, Mr. A. Bhattacharya, the learned counsel for the respondent has submitted that though the enquiry was going on but till

today no FIR has been lodged against the respondent in connection with such an enquiry. The respondent was sick, as such, he did not appear before the Enquiry Officer as per the order of this Court on 15.12.2022. Considering the health status of the respondent, the pre-arrest may not be cancelled at this stage.

7. I have considered the submissions of the learned counsel for the parties. I have also perused the order dated 08.12.2022 passed by this Court. The pre-arrest bail to the respondent was made absolute under following conditions: -

- (i) The applicant shall appear before the Officer-In-Charge, Crime Branch PS (SIT), Police Headquarters, Itanagar, Arunachal Pradesh on 15.12.2022.
- (ii) The applicant shall not tamper with the evidence of the Investigating Agency or prosecution witnesses.
- (iii) The applicant shall not leave the jurisdiction of the Officer-In-Charge PS (SIT), Police Headquarters, Itanagar, Arunachal Pradesh without the prior permission of the Officer-In-Charge concerned. However, whenever such permission is sought, the official status of the applicant and the responsibilities connected therewith shall be taken into consideration by the concerned Officer-In-Charge as and when such permission is sought for.
- (iv) Violation of any of the above conditions will automatically lead to the cancellation of this order.

- (v) In the event of the arrest of the applicant, he shall be released on execution of a bail bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the Officer-In-Charge of the Police Station concerned.
- 8.** On perusal of the order dated 08.12.2022, it reveals that the respondent was directed to appear before the Officer-In-Charge, Crime Branch PS (SIT), Police Headquarters, Itanagar, Arunachal Pradesh on 15.12.2022, but he did not appear before the Enquiry Officer as per the order of this Court without showing any such grounds.
- 9.** According to the learned counsel for the respondent, as the respondent was suffering from some diseases, he was not in a position to appear before the Officer-In-Charge, Crime Branch Police Station (SIT), as per the order of this Court but in support of the fact, no medical documents has been submitted by the respondent showing his illness and inability to appear before the Crime Branch on 15.12.2022. It is pertinent to say here that on subsequent dates also, after 15.12.2022 the respondent did not appear before the Officer-In-Charge, Crime Branch, in spite of receipt of subsequent notices from the concerned authority.
- 10.** The learned Special Public Prosecutor has produced the report regarding progress of the enquiry against the respondent which reveals that on 15.06.2022, a written complaint was received from

one Shri Tech Godum Tara that the respondent and one Mr. Dolendro Singh, Director and representatives of DS Enterprises Guwahati, District Kamrup, Assam has cheated him with a sum of Rs. 42,00,000/- (Rupees forty-two lakhs) on the pretext of Gas dealership from Assam. Accordingly, an enquiry was initiated. It also appears that during the enquiry, no bank details or the address of the accused could be provided by the complainant as most of the payments were done in cash. However, the complainant during interrogation stated that, on 27.05.2016, he deposited a sum of Rs. 5,50,000/- (Rupees five lakhs fifty thousand) through a cheque which was confirmed by the SBI concerned Branch that the said amount got debited in the account of the respondent.

11. I have considered the submissions made by the learned counsel for the parties. I have also perused the relevant documents available in the record.
12. In the Case of ***Dolat Ram vs. State of Haryana*** reported in ***(1995) 1 SCC 349*** which is held as under: -

” Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to

the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail."

- 13.** These principles have been reiterated by another two-Judge Bench decision in CBI v. Subramani Gopalakrishnan [CBI v. Subramani Gopalakrishnan, (2011) 5 SCC 296 and more recently in Dataram Singh v. State of U.P. (2018) 3 SCC 22. The observation is as under:

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail.”

- 14.** It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes

into account irrelevant materials, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail [Kanwar Singh Menna v. State of Rajasthan, (2013) 4 SCC (Cri) 614)].”

- 15.** In view of the authorities cited above have noted that there cannot be a straitjacket formula for cancellation of an order of anticipatory bail. I have already stated earlier that the respondent has violated the order of this Court dated 08.12.2022, whereby he was directed to appear before the concerned authorities on 15.12.2022. After that almost 8(eight) months have gone, the respondent did not appear in spite of receipt of several notices issued to him. No apparent ground has been shown by the respondent for his non-appearance as per the order of this Court. Though the learned counsel took the plea that respondent was sick during that period, as such, he was not in a position to appear on 15.12.2022. However, sufficient opportunity was given to the respondent to appear before the concerned authorities on subsequent dates after 15.12.2022 but the respondent did not appear without showing any reasonable grounds. The order dated 08.12.2022 clearly states that violation of any of the conditions thereon will automatically lead to the cancellation of the bail order.
- 16.** Under the facts and circumstances of the case, this Court is of the opinion that submission of the learned Special Public Prosecutor has some force to cancel the pre-arrest bail granted to the respondent.

17. Accordingly, the pre-arrest bail granted to the respondent on 08.12.2022 is hereby cancelled.

With the above observation, this CrI.M.Appln./01(AP)/2023 is disposed of.

JUDGE

Comparing Assistant