

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.57 of 2023**

The State of Tripura

Represented by the Secretary to the Government of Tripura,
Home Department, Agartala.

.....Applicant

Versus

Non-applicant

Sri Manik Lal Das @ Kala Manik,

S/o Kanai Lal Das
Resident of Ramthakur Para,
P.S.- Belonia, District- South Tripura,
Pin-799155

...Respondent

For Applicant(s)	:	Mr. Raju Datta, P.P.
For Respondent(s)	:	Mr. S. Lodh, Adv, Mr. Subham Majumder, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

16/12/2024

This application under Section 439 (2) of Cr.P.C. is filed for cancellation of the order of bail granted by Learned Sessions Judge, West Tripura, Agartala to the respondent-accused, Sri Manik Lal Das by order dated 11.10.2023 passed in connection with case No.BA 239 of 2023.

Heard Learned Learned P.P., Mr. R. Datta appearing on behalf of the State-applicant-petitioner and also heard Learned Counsel, Mr. S. Lodh appearing on behalf of the respondent-accused.

Taking part in the hearing, Learned P. P. appearing on behalf of the State-respondent first of all drawn the attention of the Court that on the basis of an FIR laid by one Sri Subrata Dey, West Agartala P.S. case No.122/2023 under Section

341/506/34 of IPC read with Section 25 of Arms Act was registered against the respondent-accused and others. During investigation according to Learned P. P., the respondent-accused preferred one anticipatory bail application before the High Court which was numbered as AB No.17 of 2023 and by order dated 10.08.2023, this High Court was pleased to reject the said anticipatory bail application filed by the respondent-accused. Thereafter, again the said respondent-accused preferred another anticipatory bail application which was numbered as AB No.22 of 2023 and this High Court by another order dated 11.09.2023 was further pleased to reject the said bail application and directed the respondent-accused to surrender before the Learned Court below. After that the present respondent-accused approached to the Hon'ble Supreme Court of India and the Hon'ble Supreme Court by order dated 25.09.2023 passed in SLP (Crl.) No.11904 of 2023 was pleased to reject the bail application of the respondent-accused but gave some direction to the respondent-accused to surrender before the Learned Trial Court and to pray for bail and accordingly, the said respondent-accused surrendered and after that the said respondent-accused further approached for bail to the Court of Learned Sessions Judge, West Tripura, Agartala and Learned Sessions Judge by order dated 11.10.2023 passed in BA No.239 of 2023 allowed the bail application filed by the respondent-accused.

Learned P. P. further submitted that after release on bail, the accused did not cooperate with the Investigating Agency rather he threatened the witnesses of the prosecution

for which the State-respondent has urged for cancellation of the bail granted to the accused on the ground that the respondent-accused did not comply with the condition of bail granted to the accused and threatened the witnesses of the prosecution. Learned P. P. also relied upon Annexure-6 i.e. the prayer of Subrata Dey to O.C., West Agartala P.S. for registering G.D. He further referred another prayer of Dhiman Debbarma (Annexure-7) requesting O.C., West Agartala P.S. to make entry in the G.D. and referring those annexed documents, Learned P. P. submitted that the respondent-accused after release on bail as per order of the Court threatened the said witnesses to withdraw the case or to face serious consequences in case of non-withdrawal of case.

Learned P. P. further submitted that the Learned Sessions Judge at the time of consideration of the bail application of the respondent-accused did not consider the observations made by this High Court and without application of proper mind has granted bail to the respondent-accused for which the interference of the Court is required and urged for cancellation of the privilege of bail granted to the respondent-accused and relied upon one citation of the Hon'ble Supreme Court of India in **Ajwar vs. Waseem and Anr.** dated 17.05.2024 reported in **(2024) SCC OnLine SC 974** wherein in Para No.27 the Hon'ble Apex Court observed as under:

"27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail

can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In **P. v. State of Madhya Pradesh: (2022) 15 SCR 211** decided by a three judges bench of this Court [authored by one of us (Hima Kohil, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Referring the same, Learned P. P submitted that if there are serious allegations against the accused, in that case also even if the accused has not misused the bail granted to him then there is scope for cancellation of the bail granted to the accused in view of the principle of law laid down by the Hon'ble Apex Court in the said case and finally, Learned P. P. urged for allowing this application and to cancel the bail granted to the accused.

On the other hand, Learned Counsel, Mr. S. Lodh appearing on behalf of the respondent-accused submitted that the prosecution has not come before the Court with clean hands. According to Learned Counsel, that the first anticipatory bail application was rejected by this Court on the ground that the respondent-accused without approaching to the Sessions Court appeared before the High Court. So, the first anticipatory

bail application was rejected. Thereafter, the said respondent-accused again preferred another anticipatory bail application which was rejected on the ground that he did not comply with the earlier order of this Court, meaning thereby he did not surrender before the Learned Court as ordered by this High Court. Learned Counsel, Mr. Lodh further submitted that after that the respondent-accused approached before the Hon'ble Apex Court and Hon'ble Apex Court accordingly directed him to surrender and to pray for bail and accordingly, the respondent-accused appeared before the Investigating Officer on 27.09.2023 and on 29.09.2023 when the I.O. thoroughly interrogated him in connection with this case and thereafter, he surrendered before the Court of Learned CJM, West Tripura, Agartala on 30.09.2023 when he was taken into custody and was remanded to J/C till 11.10.2023 and on that day, Learned Sessions Judge granted bail to the respondent-accused. So, according to Learned Counsel, the allegation of the prosecution that the respondent-accused did not cooperate with the Investigating Agency and threatened the witnesses was not correct and proper rather the same was a concocted, manufactured and baseless allegation of the prosecution.

It was further submitted that the subsequent applications/petitions of two witnesses i.e. Subrata Dey and one Dhiman Debbarma was also nothing but a manufactured story to cancel the privilege of bail granted to the respondent-accused because on the basis of those petitions, no specific cases were registered by I.O. till today i.e. almost after one year. Even the I.O. of this case also did not submit charge-sheet intentionally

against this respondent-accused. Learned Counsel further drawn the attention of the Court the objection submitted by the respondent-accused and also another FIR laid by one Tapash Ghosh to O.C., West Agartala P.S. (Annexure-B), photograph (Annexure-D) and the copy of order dated 22.02.2024 passed by this High Court in another case bearing No.B.A. 29 of 2023 (Annexure-A).

Referring those documents, Learned Counsel for the respondent-accused submitted that on bare perusal of those documents, it appears that the dispute occurred amongst the two rival parties of Tripura Cricket Association and there was no evidence on record that the respondent-accused possessed any fire arms for attracting the provision of Section 25 of the Arms Act and also referring the newspaper clippings, Learned Counsel drawn the attention of this Court that the alleged incident took place in front of police personnel but no action was taken and the Learned Sessions Judge at the time of consideration of the bail application, covered all these assertions of the prosecution and in the similar connected case, this High Court already dismissed/rejected the prayer of the prosecution for cancellation of bail granted to the accused in connection with Belonia P.S. case No.36 of 2023 under Section 448/452/325/307/384/354/120B/506 of IPC by order dated 06.06.2023 and subsequent order dated 23.08.2023.

Learned Counsel further submitted that since it is the settled position of law that once a regular bail is granted to an accused, in that case it is very difficult to cancel the privilege of bail granted to the said accused in absence of cogent materials

on record. Here in the case at hand, the prosecution could not place any materials before this Court till today to invoke the provision of Section 439(2) of Cr.P.C.

Learned Counsel in support of his contention relied upon one citation of the Hon'ble Supreme Court of India in **State (Delhi Administration) vs. Sanjay Gandhi** dated 05.05.1978 reported in **(1978) 2 SCC 411** wherein Hon'ble the Apex Court in para No.24 observed as under:

"24. Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done."

He also referred another citation of Hon'ble Supreme Court in **Dolat Ram and Ors vs. State of Haryana** dated 24.11.1994 reported in **(1995) 1 SCC 349** wherein Hon'ble the Apex Court in para No.4 observed as under:

"4. 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. However, 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 nonbailable case in the first instance and the cancellation of bail already granted."

Learned Counsel thereafter referred another citation of the Hon'ble Apex Court in **Mehboob Dawood Shaikh vs. State of Maharashtra** dated 16.01.2004 reported in **(2004) 2 SCC 362** wherein in para No.11 observed as under:

"11. Learned counsel for the appellant is correct on principles that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped in the bud and an irretrievable stage is not reached."

Referring those citations, Learned Counsel submitted that just on the basis of mere assertions of thought there is no scope to cancel the privilege of bail granted to the respondent-accused and submitted before the Court to apply the principles of law laid down by the Hon'ble Apex in the aforementioned cases and finally, Learned Counsel submitted that since their prosecution has miserably failed to produce any cogent materials on record in support of the application, as such the same should be dismissed.

I have heard detailed arguments of both the sides and gone through the relevant prosecution papers including the Case Diary as well as the documents submitted by the respondent-accused along with the written objection filed before this Court. There is no dispute on record that initially on the basis of an FIR laid by one Subrata Dey, West Agartala, P.S. case No.122 of 2023 under Section 341/506/34 of IPC read with Section 25 of Arms Act was registered against the respondent-accused and others and in course of investigation, the accused approached before the High Court twice for granting anticipatory bail but in both the occasions his bail applications were rejected on the ground that the accused did not approach to the Court of Learned Sessions Judge, directly came to the High Court. So, his one application was rejected and he was asked to surrender before the concerned Lower Court but he did not comply with the same, thereafter, the respondent-accused preferred another bail application which was numbered as AB No.22 of 2023 and by order dated 11.09.2023 his subsequent anticipatory bail application was rejected on the ground that he did not comply the earlier Court's order, so, his application was not considered. After that he approached before the Hon'ble Supreme Court and the Hon'ble Supreme Court did not consider the bail application rather directed the respondent-accused to surrender and to pray for bail and accordingly, he surrendered before the Court of Learned CJM on 30.09.2023 and then he was taken in custody for some days and thereafter, he approached before the Court of Learned Sessions Judge, West Tripura, Agartala and Learned Sessions Judge by order dated 11.10.2023 passed in B.A.

No.239 allowed the bail application covering all the aspects. The operative portion of the said order is reproduced herein below:

".....It is hereby ordered that accused Manik Lal Das alias Kala Manik shall be released on bail on his execution of a bond of Rs.2,00,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, West Tripura, Agartala, with conditions that the accused person shall report to the investigating police officer on every alternate day at 11.30 a.m and that the accused person shall co-operate with the investigating police officer for proper investigation into the alleged incident and that the accused person shall not leave the State of Tripura without prior permission of the Investigating Police officer."

The said order still stands good in favour of the respondent-accused.

Thereafter, two applications were made to the O.C., West Agartala, P.S. (Annexure-6 & 7). In those applications certain allegations were made that the respondent-accused threatened those witnesses to withdraw the case. But surprisingly, on the basis of those allegations no further fruitful action was taken by the I.O., even no specific case was registered against the respondent-accused that he flouted the conditions of bail granted to him and furthermore, on bare perusal of Annexure-6 & 7, it appears that according to prosecution on 10.12.2023 at about 05:00 p.m. when the witness, Subrata Dey was in front of his house that time the respondent-accused appeared therein and threatened him and his family members to kill them and in another application, witness Dhiman Debbarma stated that on 11.12.2023 at about 03.45 p.m. when the witness along with one Vasudeb Chakraborty was standing at Ramnagar, Road No.3, 1st Crossing

that time the respondent-accused appeared and threatened to withdraw the case. But surprisingly on perusal of the Case Diary, nowhere I find that what steps were taken by the I.O. on the basis of said petitions submitted by the alleged prosecution witnesses. Even, no specific case/cases were registered on the said allegations of the alleged witnesses of the prosecution.

Situated thus, after hearing both the sides and also after going through the all relevant papers, it also appears that the accused was thoroughly interrogated by the Investigating Agency when he had appeared before the Police nor any prayer was made by the Prosecution Agency to the Court below seeking permission to interrogate the accused in judicial custody when the accused was in custody and furthermore, on perusal of the relevant papers, at this stage there is no materials before the Court to consider that the respondent-accused has violated the conditions of bail granted to him by the Learned Sessions Judge by order dated 11.10.2023 in B.A. No.239 of 2023. Even there is no evidence on record that the accused possessed any fire arms or he used the same for the purpose of alleged commission of offence.

Situated thus, considering the materials on record, it appears that the State-petitioner has failed to make out any case for cancellation of the bail granted to the respondent-accused.

So, in view of the principles of law laid down by the Hon'ble Apex Court and considering the nature and allegation of the prosecution, in my considered view this is not a fit case for cancellation of the privilege of the bail granted to the

respondent-accused. Hence, the application for cancellation of the bail granted to the respondent-accused stands rejected being devoid of merit. It is expected that the I.O. should take all necessary steps to expedite investigation and to submit report.

Send down the Case Diary to I.O. through Learned P.P. along with a copy of this order.

With this observation, this bail application stands disposed of.

JUDGE



**MOUMITA
DATTA**

Purnita

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Date: 2024.12.16 18:34:15 +05'30'