

GAHC040012682021



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

Case No. : Crl.Petn./132/2021

Daja Nimpo
S/o Late Tada Nimpo,
Village Nimpo, PO/PS Taliha, District Upper Subansiri, Arunachal Pradesh

VERSUS

THE STATE OF AP and Anr.
Represented through the Learned Public Prosecutor2:Chandru Tanti
Age: 0
Occupation

Advocate for the Petitioner : Dugmar Kamduk

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 29.08.2024

Heard Mr. D. Kamduk, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 482 of Cr.P.C, 1973, has been filed by the petitioner, namely, **Shri Daja Nimpo**, impugning the order dated 20.12.2021, passed by the learned Sessions Judge, Khonsa in Criminal Revision No. 03/2020, whereby, the bail granted to the petitioner by order dated 11.03.2020 was cancelled.

3. The facts relevant for consideration of the instant criminal petition, in brief, are as follows:

(i) That on 14.01.2020, one Shri Chandru Tanti had lodged an FIR before the Officer-In-Charge, Kharsang Police Station, *inter alia*, alleging that his sons, namely, Shri Sumit Tani and Shri Dhurap Tanti along with son of one Shri Sunil Rotia, namely, Shri Deep Rotia, were missing since 11.01.2020. It was also stated in the FIR that they were last seen playing near a culvert at RWD colony Kharsang.

(i) On receipt of the said missing report, the Kharsang

P.S. Case No. 02/2020 under Section 363 of Indian Penal Code was registered.

4. It is submitted by Mr. D. Kamduk, learned counsel for the petitioner that as the police suspected the involvement of the present petitioner in the incident of missing of the 3(three) boys whose names were mentioned in the FIR, the petitioner approached the Court of learned Sessions Judge, Khonsa, praying for anticipatory bail, however, it was rejected by the said Court. Thereafter, the petitioner surrendered before the Court of Executive Magistrate, Changlang, who was in-charge of the Judicial Magistrate, Changlang on that day, as the concerned Judicial Magistrate was on leave. On his surrender before the Executive Magistrate, the bail application was moved by the petitioner which was allowed by the learned Executive Magistrate, Changlang by his order dated 11.03.2020 and the petitioner was allowed to go on bail of Rs. 20,000/- (Rupees Twenty thousand) with 2(two) sureties of like amount and with certain conditions. One of the conditions incorporated in the bail order was that he will appear before the Investigating Officer of the Kharsang P.S. Case No. 02/2020 on 12.03.2020 for giving his statement. Thereafter, the Investigating Officer of Kharsang P.S Case No. 02/2020 filed an application, on 13.03.2020, before the Court of learned District & Session Judge, Khonsa, praying for cancellation of the bail on the ground that the prayer for bail of the petitioner was earlier rejected by the High Court as well as by the learned Sessions Court and the custodial interrogation of the petitioner was

necessary for the said investigation. On receipt of the said application, the learned Sessions Judge, Khonsa registered a criminal revision case, namely, Criminal Revision Case No. 03/2020 and thereafter, by order dated 20.12.2021, exercised the revisional powers of the said Court under Section 397 of Cr.P.C and cancelled the bail granted to the petitioner by the Executive Magistrate by order dated 11.03.2020.

5. Mr. D. Kamduk, learned counsel for the petitioner has submitted that though in this criminal petition, the petitioner has also assailed the cancellation of bail order by the Sessions Judge, Khonsa on merit. However, they were not pressing the said points rather the petitioner is pressing the point that the order of the Sessions Judge was without jurisdiction.

6. The learned counsel for the petitioner has submitted that as the order of granting bail by the Executive Magistrate, in this case, is undoubtedly an interlocutory order, no revision lies against such an order and the learned Sessions Judge, Khonsa was wrong in exercising the revisional power for cancellation of bail granted to the petitioner by the learned Executive Magistrate.

7. The learned counsel for the petitioner has cited the following case in support of his submissions, in the case of ***State of Himachal Pradesh vs. Dile Ram*** reported in ***2008 (4) Crimes (H.P) 682***, wherein, it was

observed by the High Court of Himachal Pradesh that an order of granting of bail does not decide the rights of the parties finally and therefore, it is undoubtedly an interlocutory order. Hence, such an interlocutory order cannot be assailed in a revision due to specific bar imposed in the statute itself i.e., under Section 397(2) of Cr.P.C, which bars a revision against the interlocutory order.

8. On the other hand, Mr. T. Ete, learned Additional Public Prosecutor fairly submits that there is no dispute that an order of granting or rejecting of a bail is an interlocutory application and no revision lies against an interlocutory application. However, he submits that the learned Sessions Judge, otherwise had the power of cancelling a bail under Section 439(2) of Cr.P.C and if a power is traceable to an authority in a statute mere wrong mentioning of the statutory provision would not take away the said power. He submits that in the instant case, the learned Sessions Judge rejected the bail granted to the petitioner by the Executive Magistrate mainly on the ground that the Executive Magistrate was misled by the petitioner as the fact of rejection of anticipatory bail application by the High Court and by the Court of Sessions were not disposed before the Executive Magistrate. Moreover, the Sessions Court also took into consideration the ground that the Executive Magistrate without going through the materials on record and without calling for the Case Diary granted bail to the petitioner on the date, on which he surrendered before him. Hence, the Sessions Court rightly cancelled the bail granted to the

petitioner.

9. Mr. T. Ete, learned Additional Public Prosecutor has also cited a ruling of Apex Court in the case of ***B.S.E Brokers' Forum, Bombay and Ors., vs. Securities and exchange Board of India and Ors.,*** reported in ***(2001) 3 Supreme Court Cases 482***, wherein, the Apex Court has observed that it is well established principle in law that so long as the impugned power is traceable to the statute concerned, mere omission or error in reciting the correct provision of law does not denude the power of the authority from taking statutory action so long as its action is legitimately traceable to a statutory power governing such action.

10. I have considered the submissions made by the learned counsel for the petitioner as well by the learned Public Prosecutor and I have perused the materials available on record and also, I have gone through the judgment cited at bar by the learned counsel for both the sides.

11. The main issue to be decided in this criminal petition is as to whether the learned Session Judge, Khonsa was right in exercising the revisional jurisdiction for cancellation of bail of the petitioner which was granted to him by the order dated 11.03.2020.

12. On perusal of the impugned order, it appears that the impugned order passed by the learned Sessions Judge, Khonsa was in a criminal

revision case i.e., the Criminal Revision Case No. 03/2020. Though, the learned Sessions Judge, Khonsa has justified, invoking in the impugned order, invoking the powers under Section 397/401 of Cr.P.C, in setting aside the bail order dated 11.03.2020 passed by the learned Executive Magistrate, Changlang, however, there is an unanimity at bar that it is a settled principle of law that a bail order is considered to be interlocutory order. And as the said order is interlocutory order the embargo provided him Section 397(2) of Cr.P.C, 1973, regarding non-applicability of revisional power in relation to any interlocutory order would come into play and therefore, this Court is also of considered opinion that the learned Sessions Judge, Khonsa, erred in invoking powers under Section 397/401 of Cr.P.C for cancelling the bail granted to the petitioner.

13. The appropriate provision for the Sessions Court would have been its powers under Section 439(2) of Cr.P.C, where the Court of Sessions has the power to direct any person who has been released on bail be arrested and commit him to custody.

14. It is also pertinent to mention herein that in the instant case, the reasons for cancelling the bail order mentioned by the learned Sessions Judge, Khonsa in the impugned order appears to be reasonable as the learned Executive Magistrate, while granting bail to the petitioner appears to have been misled by non-disclosure of the fact of rejection of bail to the petitioner by the Court of learned Sessions Judge as well as by the High

Court.

15. Though, this Court is of considered opinion that the learned Sessions Judge, Khonsa erred in invoking revisional powers for cancellation of the bail of the petitioner, however, this Court is also of view that the learned Sessions Judge, Khonsa do have such power to cancel the bail under Section 439(2) of Cr.P.C. Hence, under the facts and circumstances of this case, this Court is of considered opinion that mere omission or invoking wrong provision by the Court would not denude its power of taking statutory action in an appropriate case, so long as its action is legitimately traceable to a statutory power governing such action. In the instant case, the learned Sessions Judge do have such power to cancel bail under Section 439 of Cr.P.C, 1973. Hence, this Court is of considered opinion that in exercise of its inherent jurisdiction under Section 482 of Cr.P.C, this Court does not find it appropriate to interfere in the impugned order of the learned Sessions Judge, Khonsa.

16. However, as the bail was granted to the petitioner by the learned Executive Magistrate in the year 2020 itself i.e., about 4(four) years ago and as by order dated 18.01.2022, this Court had stayed the operation of the impugned judgment dated 20.12.2021, passed by the learned Sessions Judge, Khonsa in Criminal Revision No. 03/2020, this Court is of considered opinion that the question whether custodial detention of the present petitioner is necessary now or not for the sake of the investigation

is also relevant while giving effect to the impugned order.

17. In view of above, though this revision petition is dismissed, however, the petitioner is given interim protection against arrest in connection with Kharsang Police Station Case No. 02/2020 for next 15 (fifteen) days, so as to enable him to move bail application before the appropriate Court within the said period, if so advised. If such a bail application is moved by the petitioner, same shall be considered by the concerned Court as per law.

18. With the above observation, this criminal petition is hereby disposed of.

JUDGE

Comparing Assistant