

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.75 of 2024

The State of Tripura,
represented by the Secretary
to the Government of Tripura,
Home Department, Agartala

-----**Petitioner**

-Vs-

Smt. Payel Biswas,
Wife of Sri Shantanu Biswas,
Resident of Milan Chakra,
P.O. & P.S. A.D. Nagar,
District: West Tripura

---**Respondent**

For Appellant(s)	:	Mr. Raju Datta, P.P. Mr. P. Saha, Adv.
For Respondent(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. K. Nath, Adv.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

24/01/2025

This bail application under Section 439(2) read with Section 482 of Cr.P.C. is filed by the State of Tripura for cancellation of the order dated 28.03.2024 delivered by Learned Sessions Judge, West Tripura, Agartala in connection with Bail Application No.45 of 2024 under Section 120(B)/406/468/417/420 of IPC, granting anticipatory bail to the respondent-accused Smt. Payel Biswas.

Heard Learned P.P. Mr. Raju Datta appearing on behalf of the state-appellant and also heard Learned counsel Mr. P. Saha appearing on behalf of the de-facto-complainant i.e. bank authority and further heard Learned Senior counsel Mr. P. Roy Barman assisted by Mr. K. Nath, Learned counsel appearing for the respondent-accused.

Taking part in the hearing Learned P.P. Mr. Raju Datta first of all drawn the attention of the court that the initially the FIR was

laid by the respondent-accused herself and submitted that on the basis of the FIR laid by the respondent-accused West Agartala, PS Case No.161 of 2023 under Section 120-B/406/468/471/420 was registered against 69 loanees with the allegation that those persons obtained loan using fraud and fake documents and also showing fake unit before TGB, DC, Bazar Branch and thus a sum of Rs.2,99,15,000/- was disbursed and after registration of the case according to Learned P.P. the respondent-accused first of all approached for granting anticipatory bail before the court of Learned Sessions Judge, West Tripura, Agartala and accordingly the same was registered as Bail Application No.41 of 2024 and by order dated 21.03.2024 according to Learned P.P. Learned Sessions Judge was pleased to reject the bail application of the petitioner on the ground that no material was available in the CD regarding apprehension of the petitioner that she may be arrested on bail. But thereafter the respondent-accused according to Learned P.P. again approached for granting anticipatory bail which was registered as Case No. Bail Application 45 of 2024 and Learned Sessions Judge by order dated 28.03.2024 allowed the bail application on the ground that on that relevant point of time the respondent-accused was the Manager of Tripura Gramin Bank, Durga Chowmuhani Branch when there was no allegation against her. Learned P.P. further drawn the attention of this court that a preliminary inquiry was conducted by the bank authority and after that another FIR was laid by the Regional Manager, TGB, Durga Chowmuhani Bazar Branch to OC Agartala PS on 31.01.2024 wherein it was mentioned that the respondent-accused being the

Manager of the Branch giving the undue privilege to the most of the loanee to submit fake documents show fake unit and based on which huge amount of loan of Rs.2,99,15000/- was disbursed illegally, fraudulently and dishonestly and as per report of the I.O. the said second FIR was tagged with the record. But Learned Sessions Judge at the time of considering of bail application on 28.03.2024 which was available with the record failed to appreciate the said subsequent FIR laid by the bank authority against the respondent-accused and other materials on record. Learned P.P. further submitted that since there was misappropriation of huge public money, so for the sake of investigation custody interrogation of the accused is required. So Learned P.P. in summing up of his argument urged for cancellation of the order of bail granted by Learned Sessions Judge to the respondent-accused on 28.03.2024.

Learned counsel Mr. P. Saha appearing on behalf of the de-facto-complainant submitted that he has submitted one written note wherein in para No.1 the de-facto-complainant mentioned that on preliminary investigation it was found that the respondent-accused assisted the loanee to sanction loan by using fake documents and furthermore the loan amount was directly credited to the account of the respective account holders inspite of releasing the same to the respective vendors. Thus misappropriated of the huge public money and due to the official procedure of the bank initially no FIR could be laid against the respondent-accused. He also relied upon Annexure-D-1 i.e. the second FIR dated 31.01.2024 and the letter dated 05.06.2024 to

OC, West Agartala PS to Regional Manager, Tripura Gramin Bank, Annexure-D-2 wherein the OC, West Agartala P.S. informed the bank authority stating that the subsequent complaint was tagged with the original case record as the matter was same and finally Learned counsel for the defacto-complainant with the consent of Learned P.P. submitted that there is sufficient materials showing implication of the respondent-accused with the alleged crime, so Learned Counsel urged for cancellation of the order of bail granted by Learned Sessions Judge, West Tripura, Agartala on 28.03.2024 in connection with BA No.45 of 2024.

Per contra, Learned Senior Counsel Mr. P. Roy Barman assisted by Mr. K. Nath, Learned counsel appearing on behalf of the respondent-accused first of all submitted that this present petition is not maintainable as it does not disclose any cause of action. Secondly referring the order dated 28.03.2024 i.e. the operative portion Learned Senior Counsel drawn the attention of the court that on perusal of the case diary Learned Sessions Judge allowed anticipatory bail to the respondent-accused with certain conditions and accordingly the respondent-accused appeared before I.O. to assist the investigation, but there is no such allegation on record from the side of the prosecution that the respondent-accused has misused the bail or violated the conditions of the bail. As such, in view of the provision provided under Section 439(2) of Cr.P.C. there is no scope to interfere with the order passed by Learned Sessions Judge at this stage. Learned Senior Counsel further submitted that the accused being a responsible Officer of the bank and at the time of releasing of loan

amount to a person so many procedures are adopted and based on the report of other officers of the bank the loan is disbursed so the respondent-accused cannot be held liable for that and since she is cooperating with the investigating agency and there is no chance of her absconsion, so at this stage there is no scope to cancel the order of bail. Learned Senior Counsel further drawn the attention of the court referring para No.8 of the objection of the respondent-accused wherein it is stated that the respondent cannot grant sanction loan to any beneficiaries. Signature of Assistant Manager (Processing Officer) is required who after verifying documents and personally visiting the site, process the loan proposal after signing it and thereafter Bank Manager approves and sanctions the loan proposal and the present respondent acted in bonafide. Verification of documents and visiting of sites in connection with the sanction of loans was not carried out by the present respondent and till date the Assistant Managers (Processing Officers) have not been interrogated by the investigating officer. Learned Senior Counsel further submitted that there cannot be any second FIR on the same subject matter so the submission of Learned counsel for the de-facto complainant cannot be accepted at this stage and finally Learned Senior Counsel submitted that since there was no violation of the order of bail granted by the Learned Sessions Judge, West Tripura, Agartala to the respondent-accused. So this present petition for cancellation of bail may be rejected henceforth and in summing up Learned Senior Counsel relied upon one citation of Supreme Court of India in **Myakala Dharmarajam and Others vs. State of**

Telengana and Another reported in **AIR 2020 SC 317** wherein

in para No.7 Hon'ble the Supreme Court observed as under:

"7. In Raghbir Singh v. State of Bihar² this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."

Referring the same Learned Senior Counsel submitted that since there was no violation of the bail granted to the respondent-accused, now this present application filed by the prosecution is not maintainable and it is nothing but to harass the respondent-accused and urged for rejection of the application of the prosecution.

I have heard detailed argument of both the sides and gone through the case diary and other relevant prosecution papers and the records of the Learned Court below. Admittedly in this case initially the prosecution was set into motion on the basis of an FIR laid by the respondent herself to the OC, West Agartala, PS on 30.08.2023 wherein there was allegation against 69 borrowers that at the time of obtaining loan they used some false and fabricated documents and showed fake unit before TGB D.C. Bazar Branch and during investigation the Bank Authority after preliminary inquiry also laid another FIR on 31.01.2024 wherein the bank authority stated that the respondent-accused during her tenure had given undue privilege to most of the loanees to submit

fake documents and show fake units and based on which those loans were sanctioned and disbursed on the part of the said Officer illegally, dishonestly and fraudulently. It was further submitted that at the instance of the respondent-accused it was arranged to disburse the amount directly to the savings bank account of the respective loanees instead of disbursing the same to the vendors' account without any reasonable cause. Resultantly instead of proper utilization of loan amount on the part of the 69 loanees the same was misappropriated and according to the bank authority the respondent-accused was responsible officer of the bank severely failed to ascertain the end use of the fund. Further, from the communication of OC, West Agartala, PS to Regional Manager, TGB dated 05.06.2024 it appears that the subsequent FIR was tagged with the original case record.

I have perused the petition filed by the prosecution and also the objection submitted by the respondent-accused and also the written note by the de-facto complainant through their engaged Learned Counsel and also perused the statements of witnesses so far collected by I.O. up to the stage of investigation. It is on record that after registration of the case initially the respondent accused moved on bail application to the Learned Sessions Judge which was numbered as BA No.41 of 2024 and by order dated 21.03.2024 the Learned Sessions Judge rejected the bail application to the accused on the ground that there was no reason for apprehension of the petitioner and by subsequent bail application which was registered as BA No.45 of 2024 dated 28.03.2024 Learned Sessions Judge on perusal of the CD came to

the observation that in the FIR there was no allegation against the respondent-accused. So Learned Sessions Judge by the said order dated 28.03.2024 granted anticipatory bail to the said respondent-accused with some conditions. But surprisingly although the second complaint which was tagged with the record after inquiry which was submitted by the bank to the OC, West Agartala PS, the same was not brought to the notice of Learned Sessions Judge at the time of hearing or the same might have lost sight of the Learned Sessions Court at the time of consideration of the bail application of the respondent-accused. From the statements of the witnesses collected by I.O. up to the stage of investigation it appears that the allegation against the respondent-accused is no doubt serious and heinous one also. She misused her chair being a responsible Public Officer in disbursing loan amount to the different loanees. So *prima facie* there is no scope to presume the respondent-accused to be innocent at this stage and to unearth the truth this court is of the considered opinion that her custodial interrogation will be required for proper investigation of this case. The citation as referred by Learned Senior Counsel in course of hearing of arguments in **Myakala Dharmarajam and Others** (supra) is no doubt relevant but the same principle of law laid down by the Hon'ble Apex Court cannot be applied in this case at this stage because in the said citation in para No.8 Hon'ble the Apex Court further observed as under:

"8. 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 material, 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: AIR 2013 SC 296."

Learned P.P. in course of hearing of argument also relied upon another citation of the Hon'ble Supreme Court of India in **Ajwar vs. Waseem and Another** reported in **(2024) 10 SCC 768** wherein in para No.27 the 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 and Another(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, 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."

From the aforesaid citation it appears that if there is/are serious allegations against the accused and if the accused also does not misused the bail granted to her in that case such as order can be cancelled by the same court that has been granted bail to the accused and even bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record and not looked into the

gravity of the offence or the impact on the society resulting in such an order.

Here in the given case after considering the materials on record it appears that there is serious allegation against the respondent-accused showing her involvement with the alleged crime because without her indulgence and assistance such a huge amount of loan could not be released/disbursed in favour of the 69 loanees who have obtained loan on the basis of fake documents and showing fake units i.e. business place.

I have also seen the relevant datas collected by the I.O. during investigation at the time of releasing loan amount to the different loanees it appears that without verifying the norms i.e. without obtaining the proper application format, without appraisal recommendation sheet the disbursement of the loan was made directly to the account of the loanees and it could not have been possible without the active connivance of the respondent-accused in this case. So considering all, at this stage, it appears to this court that the order dated 28.03.2024 delivered by Learned Sessions Judge, West Tripura, Agartala in connection with Bail Application No.45/2024 was not proper because the Learned Sessions Judge at the time of granting anticipatory bail did not consider the gravity of the offence and also did not consider the relevant materials available on record which shows implication of accused with the alleged crime. So in view of the principle laid down by the Hon'ble Apex Court in the said case I am of the considered view that the order dated 28.03.2024 delivered by Learned Sessions Judge, West Tripura, Agartala in connection with

Bail Application No.45/2024 needs to be cancelled. Accordingly the order dated 28.03.2024 delivered by Learned Sessions Judge, West Tripura, Agartala in connection with BA No.45 of 2024 stands cancelled. The respondent-accused is directed to surrender before the Learned Jurisdictional Magistrate with a period of seven days from the date of passing of this order failing which case will proceed in accordance with law against her.

Send down the LCR along with a copy of this order to the Learned Jurisdictional Magistrate and also send down the records of BA No.45 of 2024 and the records of BA No.41 of 2024 to the court of Learned Sessions Judge, West Tripura, Agartala along with a copy of this order. Further send down the Case Diary along with a copy of this order to the I.O. through Learned P.P.

Thus the application filed by the Prosecution praying for cancellation of bail granted to the respondent-accused is accordingly hereby allowed.

The application is thus disposed of.

JUDGE

**MOUMITA
DATTA**

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