

BR 22.3.
11 2021

CRM 2649 of 2021

In the matter of : Abu Horaira

.... Petitioner

**In Re : An application under Section 439(2) of the
Code of Criminal Procedure.**

Mr.Somnath Gangopadhyay For the petitioner

Ms. Sreeparna Das For the State

**Mr. Himansu Dey, Senior Advocate,
Mr. Fazle Rabi for the O.P. Nos. 2 and 3**

Mangalkote Police Station case No. 32 of 2021 was registered under Sections 448/341/323/325/308 of the Indian Penal Code on the basis of a written complaint submitted by the de facto complainant against the accused persons. The learned Additional Sessions Judge, 1st Court at Katwa vide an order dated 17th February, 2021 granted bail to the accused persons, namely, Golam Goush and Md. Isa Sekh under Section 439 of the Code of Criminal Procedure.

The present application for cancellation of bail has been filed by the de facto complainant alleging, inter, alia that the learned Additional Sessions Judge failed to appreciate the gravity of offence committed by the accused persons. In support of his contention the learned counsel for the petitioner draws my attention to three photographs annexed with the application for cancellation of bail at page 34 to page 36. From the said photographs it is found and I am in conformity with the learned advocate for the petitioner that the victim suffered serious injury on his head and leg. His leg was

fractured so his head the frontal part of the skull was severely fractured and defused on being assaulted on the date and time of occurrence assaulted by the accused persons.

The learned advocate for the accused persons on the other hand has raised a pertinent question as to whether there is any allegation against the petitioner with regard to their post bail conduct. They have not violated any condition of bail granted by the learned Additional Sessions Judge, Katwa. Under such circumstances bail granted to the accused persons/opposite parties cannot be cancelled.

Learned advocate for the State has submitted to the same tune as advanced by the learned advocate for the accused/opposite parties.

Having heard the learned counsel for the parties it is ascertained that bail was granted by the learned Additional Sessions Judge on perusal of the material on record and case diary as well as the statement of the witnesses. In an application for cancellation of bail it is not the scope of the Court to consider the legality or validity of the order of bail. A bail can only be cancelled if post bail conduct of the accused persons is considered to be objectionable and not proper for impartial investigation of the case.

In the instant case no such application even has been made against the accused persons. Therefore, the application under Section 439(2) cannot be entertained and the same is rejected.

(Bibek Chaudhuri, J.)

