

22.03.2021

CRM 11234 of 2020

**In the matter of : The State of West Bengal.
..... the petitioner**

For the petitioner:

Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Md. Safir Ahmed, Adv.

For the opposite party:

Mr. Bari Israil, Adv.

This is an application filed by the State of West Bengal through the Forest Range Officer, Ramnagar Range, Baruipur, South 24 Parganas praying for cancellation of bail under Section 439(2) of the Code of Criminal Procedure against the opposite party.

For proper adjudication of the instant application, it is necessary to state that the opposite party was arrested on 5th September, 2020 when the officers of the Forest Department conducted a raid in his house and recovered approximately 3 kgs deer meats wrapped in a plastic bag. The opposite party was arrested and on interrogation it was learnt from the opposite party that he purchased 13 kgs of deer meats from one Sambhu Giri and sold 10 kgs out of the said meats to different persons. Deer is protected animal under schedule III of Wild Life (Protection) Act 1972 and the opposite party committed offence under Section 50 and 51 of the said Act.

Accordingly he was arrested by the Forest Range Officer, Ramnagar Range and was forwarded to the court of the learned Additional Chief Judicial Magistrate at Baruipur. On 5th September, 2020 the opposite party was granted bail by the learned Additional Chief Judicial Magistrate, Baruipur on the ground that the investigation officer did not serve any notice to him following the

procedure led down in **Arnesh Kumar vs. State of Bihar & Anr.** reported in **(2014) 8 SCC 273**.

The State of West Bengal has filed the instant application for cancellation of bail on the grounds that the principle led down in Arnesh Kumar vs. State of Bihar & Anr. is not application in the instant case as the opposite party was arrested while possessing deer meat. Detention of the opposite party was necessary for the interest of the investigation of the case and accordingly the prayer for bail may be cancelled.

Section 51 of the said Act prescribes punishment of an offence for contravention of any provision of the Act of imprisonment for a term which may extend to three years or with fine which may extend to Rs.25000/- or with both.

In a proceeding under Section 439(2) of the Code of Criminal Procedure for cancellation of bail, an order of bail cannot be assailed on the ground of perversity or on the ground that the detention of the accused was necessary for investigation of the case. An order of cancellation of bail under Section 439(2) of the Code of Criminal Procedure can only be based on the basis of on the basis of post bail conduct. The following situations may justify the cancellation of bail:-

- (a) Interference or attempt to interfere with the due course of administration of Justice.
- (b) Evasion or attempt to evade the due course of justice.
- (c) Abuse of the concession granted to the accused.
- (d) Possibility of the accused.
- (e) Livelihood/actual misuse of bail.
- (f) Livelihood of the accused tampering with the evidence or threatening witnesses.
- (g) Other supervening circumstances, which have rendered it no longer conducive to a fair trial to

allow the accused to retain his/her freedom by being on bail.

Apart from the supervening factors an order of bail cannot be cancelled. In the instant case the petitioner submits that custodial interrogation of the accused was necessary for the purpose of investigation of this case. This cannot be a ground for cancellation of bail granted by the learned court below in favour of the accused. For the reasons stated above, the instant motion is rejected on contest, however without cost.

(Bibek Chaudhuri, J.)