

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL MISCELLANEOUS JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Debangsu Basak**

**AND**

**The Hon'ble Justice Bibhas Ranjan De**

**CRM (DB) 146 of 2022**

**Imamul Hak @ Imamul Haque  
Vs.  
The State of West Bengal**

|                             |                                                                                                        |
|-----------------------------|--------------------------------------------------------------------------------------------------------|
| For the Petitioner          | : Mr. Sekhar Kumar Basu, Sr. Adv.<br>Mr. Diptangshu Basu<br>Ms. Suchismita Dutta<br>Ms. Pranidhi Singh |
| For the State               | : Mr. Madhusudand Sur, Ld. APP<br>Mr. Dipankar Paramanick                                              |
| For the defacto complainant | : Mr. Jisan Iqubal Hossain<br>Mr. Kunal Ganguly                                                        |
| Heard on                    | : 20.04.2022                                                                                           |
| Judgement on                | : 20.04.2022                                                                                           |

**DEBANGSU BASAK, J.:**

1. Petitioner renews the prayer for bail.
2. Learned senior advocate appearing for the petitioner submits that the petitioner was initially discharged from the charge-sheet. The

petitioner was, thereafter, sought to be roped into the proceedings by exercise of powers under Section 319 of the Criminal Procedure Code. He refers to the order dated January 21, 2020 passed by the revisional court in CRR 214 of 2020. He submits that such order was passed ex parte. The jurisdictional court, thereafter, on the application by the defacto complainant exercised powers under Section 319 of the Criminal Procedure Code by the order dated January 8, 2021. The jurisdictional court ought to have invoked Section 398 of the Criminal Procedure Code prior to invoking Section 319 of the Criminal Procedure Code thereof. Moreover, in the event, the jurisdictional Court invoked Section 319 of the Criminal Procedure Code, such court ought to have heard the petitioner. The petitioner was not heard at the stage of Section 319. In support of his contentions, he relies upon **(2014) 2 Supreme Court Cases (Cri) 86 (Hardeep Singh Vs. State of Punjab and Others)** and **(2015) 3 Supreme Court Cases (Cri) 756 (Jogendra Yadav and Others Vs. State of Bihar and Others)**.

3. Learned advocate appearing for the State submits that the order of the revisional court is binding upon the parties. He submits that such order was not assailed by the petitioner before any forum. On an application made by the defacto complainant, on completion of examination of at least 8 prosecution witnesses, the jurisdictional court on scrutiny of the evidence of the prosecution witness nos. 1, 2, 3 and 8 found the names of the four accused persons who were not sent up in

the charge-sheet. The petitioner is one of them. Thereafter, the jurisdictional court invoked the provisions of Section 319 of the Criminal Procedure Code and proceeded against the petitioner. The petitioner did not assail the order dated January 8, 2021 by which, the provisions of Section 319 of the Criminal Procedure Code was invoked. Thereafter, the petitioner approached this Hon'ble Court for bail in CRM 4577 of 2021 which was rejected on September 28, 2021. The aspect of Section 319 of the Criminal Procedure Code was considered by the co-ordinate bench while rejecting the prayer for bail. Therefore, the petitioner is not entitled to any bail. At the stage of the proceedings for invocation of Section 319 of the Criminal Procedure Code, petitioner did not go up before higher forum to assail such order.

**4.** The defacto complainant is represented.

**5. *Hardeep Singh (Supra)*** is of the following view:

“106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the

accused has committed any offence” is clear from the words “*for which such person could be tried together with the accused*”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C.

without resorting to the provision of Section 319 Cr.P.C. directly.”

**6. Jogendra Yadav (Supra)** relies upon **Hardeep Singh (Supra)** and is of the following view:

“9. It was, however, urged by the learned counsel for the appellants that in order to avail of the remedies of discharge under Section 227 Cr.P.C., the only qualification necessary is that the person should be an accused. The learned counsel submitted that there is no difference between an accused since inception and the accused who has been added as such under Section 319 Cr.P.C. It is, however, not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a persons who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the court.

**7. Hardeep Singh (supra)** lays down that a court is required to be circumspect in evaluating the evidence at trial. If after careful

examination of the evidence, it decides to proceed against a person discharged from the proceedings earlier, it may take steps in accordance with section 398 of the Criminal Procedure Code without resorting to the provisions of Section 319 thereof directly.

**8. *Jogendra Jadav (supra)*** considers ***Hardeep Singh (supra)***. It lays down that an accused under section 319 of the Criminal Procedure Code is heard before being added. Often he gets a further hearing if he challenges the summoning order before the High Court.

**9.** In the facts of the present case, various persons including the petitioner were not charge sheeted. A criminal revisional application was filed being CRR 214 of 2020 which was disposed of on January 21, 2020. The revisional court by its order allowed the defacto complainant to take out an application under Section 319 of the Criminal Procedure Code, if so advised, at the appropriate stage of the case. The trial of the case was in progress. At least 8 prosecution witnesses were examined. At that stage, the defacto complainant applied under Section 319 of the Criminal Procedure Code. Such application was considered and allowed by the order no. 29 dated January 8, 2021 by the trial court. By the order dated January 8, 2021, the trial court returned a finding that on scrutiny of the evidence of the prosecution witness nos. 1, 2, 3 and 8, the Court finds names of four accused persons who were not sent up in the charge-sheet but were reflected in the evidence. Therefore, the trial court decided to invoke provisions of Section 319 of the Criminal

Procedure Code against such persons. The Court issued summons to such persons. The petitioner is one of the persons proceeded against.

**10.** The petitioner did not assail the order dated January 8, 2021 passed by the trial court before any forum. The petitioner allowed the order dated January 8, 2021 to become final.

**11.** Thereafter, the petitioner applied for bail in CRM 4577 of 2021 before this Hon'ble Court which was rejected on September 28, 2021. The aspect that the petitioner was sought to be proceeded against on the basis of invocation of powers under Section 319 of the Criminal Procedure Code was noted in the order rejecting the bail on September 28, 2021. The High Court did not grant bail to the petitioner. The High Court, however, requested the trial court to expedite the trial and to conclude the same as expeditiously as possible preferably within a period of one year from the date of the order.

**12.** A period of one year from the date of such order is yet to expire.

**13.** The petitioner, thereafter, approached the trial court for bail, which was rejected.

**14.** Through this application for bail, the petitioner is essentially challenging the order dated January 8, 2021 when the trial court decided to invoke provisions of section 319 of the Criminal Procedure Code. As noted, the petitioner did not avail of his remedies before the appropriate forum, at the appropriate time, with regard to such order. In

fact , it can be said that the, petitioner of his actions and non actions allowed the order dated January 8, 2021 of the trial court to attend finality. Therefore, at this stage, it would be improper to examine the order dated January 8, 2021 passed by the trial court as to whether it meets the standards laid down in ***Hardeep Singh (supra)*** and ***Jogendra Jadav (supra)*** or not.

**15.** Moreover, there is hardly any material change in circumstances subsequent to the earlier order of rejection of the prayer for bail on September 28, 2021, therefore, we are unable to enlarge the petitioner on bail.

**16.** Accordingly, the prayer for bail of the petitioner is rejected.

**17. C.R.M. (DB) 146 of 2022** is dismissed.

**(DEBANGSU BASAK, J.)**

**18.** I agree.

**(BIBHAS RANJAN DE, J.)**