

16.03.2022

Item No.73
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 394 of 2020

**Samsur Doha @ Mantaj @ Fakir
versus
Smt. Sumita Shee (Santra) & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed in connection with Sutahata Police Station Case No. 130 of 2019 dated 15.05.2019 under Sections 354A/376/506/34 of the Indian Penal Code.

Mr. Avik Dutta,
Mr. Syed Julfikar Ali ... For the Petitioner.

Mr. Suman De ... For the Opposite Party No.1.

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick ... For the State.

Report dated 13.12.2021 submitted by Mr. Sur, learned advocate appearing for the State be kept on record.

The present revisional application has been preferred challenging the order dated 06.01.2020 passed by the learned Sessions Judge, Purba Medinipur in connection with Criminal Misc. Case No. 1716 of 2019.

I find from the impugned order that the learned sessions court was pleased to cancel anticipatory bail by recalling the order dated 09.07.2019 passed in Criminal Misc. Case No. 980 of 2019.

Mr. Dutta, learned advocate appearing for the petitioner submits that the anticipatory bail was not in existence on the date, the learned sessions court considered the same as subsequently on 06.09.2019, the petitioner

appeared/surrendered before the learned ACJM-II, Haldia and he was released on bail.

Although the learned advocate for the petitioner could not satisfy this Court regarding the compliance of the condition for meeting the Investigating Officer, but a pertinent question of law has been raised by the learned advocate as to when the anticipatory bail order was not existing on the date when it was considered, how could the learned sessions court recall the said order and give effect to an order granting bail. Sections 437 and 438 of the Code of Criminal Procedure are two separate sections. Apparently although as a matter of hierarchical respect much scrutiny is not done if a person has surrendered in a close proximity to an order granting anticipatory bail, but so far as the interpretation of the Criminal Procedure Code is concerned, the two sections operate under separate conditions. The part of the order passed by the learned Sessions Judge, Purba Medinipur i.e. *“The anticipatory bail in the name of the opposite party No.1 Samsur Doha@Mantaj @Fakir as passed by this Court in Criminal Misc. Case No. 980 of 2019 vide order No. 03 dated 09.07.2019 stands hereby recalled and cancelled.”* is hereby set aside.

Another aspect is that the G.D. Entry dated 15.12.2019 was very vague. However, having regard to the fact that more than two years have passed since passing of the order, this Court is of the opinion that the complainant had a right to have approached for cancellation of bail if there was any violation of the condition.

Let Criminal Misc. Case No. 1716 of 2019 be treated as an application for cancellation of bail. The learned sessions court would freshly consider the same after granting opportunity to the accused/petitioner before this Court to present his case including filing a fresh opposition to the petition along with all documents in his custody.

Learned court will give audience to both the parties including the State to satisfy itself regarding the change circumstances apart from other conditions regarding requirement of the petitioner in custody as initially the court was pleased to grant anticipatory bail and dispose of the application independently without being influenced by any observation made by this Court.

Mr. Sur, learned advocate for the State is directed to communicate with the learned Public Prosecutor, Purba Medinipur who will be present on 30.03.2022 before the learned sessions court.

Learned advocates for the accused/petitioner as well as the *de facto* complainant/opposite party no.1 is directed to be present in court on the said date.

The learned Sessions Judge would fix a date and proceed with the matter on the said date.

The learned Sessions Judge will dispose of the application as he deems fit and proper within a period of 60 days on and from 30.03.2022.

With the aforesaid observations, the revisional application being CRR 394 of 2020 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)