

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.M. 2089 of 2021

**Anisur Rahaman
Vs.
State of West Bengal & Anr.**

**For the Appellant : Mr. Ayan Basu, Adv.,
Mr. Biswajit Das, Adv.,
Mr. Sumit Routh, Adv.**

**For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly, Adv.,
Mr. Sandip Chakraborty, Adv.**

**For the Opposite : Mr. Sandipan Ganguly, Sr. Adv.,
Party No. 2 Mr. Kusal Kumar Mukherjee, Adv.**

**Heard on : 08.04.2021, 3.02.2022,
09.02.2022, 15.02.2022.**

Judgment On : 15.02.2022

Bibek Chaudhuri, J.

This is an application for cancellation of order of bail passed by the Learned Chief Judicial Magistrate, Barasat on 11th December, 2021 in connection with Duttapukur Police Station Case No. 36/2020 dated

14.01.2020 under Sections 420/406/506/34 of the Indian Penal Code corresponding to G.R. Case No. 343/2020. It is alleged by the *de facto* complainant that the opposite party no. 2 was previously known to him. The wife of the opposite party no. 2 is an employee of Dr. A. P. J. Abdul Kalam Government College at New Town. The opposite party no. 2 exerted undue influence upon the petitioner stating, *inter alia*, that his wife was having good connection with the higher officials of Education Department, Government of West Bengal and the opposite party no. 2 with the help of his wife would arrange a job for the son of the *de facto* complainant. He also demanded a sum of Rs.20,00,000/- from the *de facto* complainant stating, *inter alia*, that the said sum was to be paid to the higher officials of the Education Department as bribe to ensure employment of his son. The *de facto* complainant paid a sum of Rs.20,00,000/- by Bank transfer on 19th July, 2018 and 30th July, 2018. In the month of September, the *de facto* complainant insisted the opposite party no. 2 and his wife to hand over the letter of appointment in the name of his son but they delayed in handing over such letter of appointment on one pretext or another. Subsequently, they started avoiding the *de facto* complainant. The *de facto* complainant understood that he was cheated by the accused persons and put pressure upon them to return the said amount. The opposite party no. 2 issued two cheques

on 20th August, 2019 for Rs.20,00,000/- drawn on Bandhan Bank, Salt Lake Branch. However, both the said cheques were dishonoured due to insufficient fund. Thereafter, the *de facto* complainant went to the house of the opposite party no. 2 but he refused to meet him or talk to him. He also threatened to *de facto* complainant with dire consequence. The *de facto* complainant again demanded the said money on 15th December, 2019 for the purpose of medical treatment of one of his relatives. But the accused persons abused him with filthy language.

On the basis of the said complainant, Police registered Duttapukur Police Station Case No. 36/2020 dated 14th January, 2020 under Sections 420/406/506/34 of the Indian Penal Code.

The Learned Advocate for the petitioner draws my attention to the order dated 11th February, 2021 passed by the Learned Chief Judicial Magistrate, North 24-Pargnas wherefrom it appears that on 11th February, 2021 the opposite party no. 2 surrendered before the Court and prayed for bail. The Learned Chief Judicial Magistrate has passed the following order granting bail to the opposite party no. 2: -

"Heard Ld. Advocate for the accused and the Ld. APP.

Ld. APP raises no serious objection against the bail prayer of the accused.

Perused the materials on record. Considered.

It appears that the offences are triable by the Court of Magistrate and today the accused surrenders before this Court voluntarily. That apart, the co-accused has been granted bail in this case.

Considering the above, I am of the opinion that there is no need for custodial detention of the present accused and I am inclined to enlarge the accused on bail.

Hence, the bail prayer of the accused stands allowed.

Accordingly, the accused named above may find bail of Rs.2,000/- with two registered sureties of Rs.1,000/- each on condition that if on bail the accused shall meet the Investigating Officer twice a week for 3 months, i.d. to JC till date”.

It is submitted by the Learned Advocate for the petitioner that the Learned Chief Judicial Magistrate did not assign any reason for passing the order of bail of the opposite party no. 2.

It is on record that the opposite party No.2 and her husband committed the offence of cheating and misappropriated a sum of Rs.20,00,000/- from the petitioner. He issued two cheques in the name of the petitioner but the said cheques were dishonoured on the ground of insufficient fund. Thus, opposite party No.2 and her husband misappropriated a huge sum of Rs.20,00,000/- from the petitioner. In view of such circumstances, the learned Chief Judicial Magistrate ought

to have held that custodial interrogation of the opposite party No.2 and her husband was absolutely necessary. The learned Chief Judicial Magistrate committed a grave error in holding that there is no need for custodial detention of opposite party No.2 at the stage of investigation of the case.

It is further submitted by the learned Advocate for the petitioner that the learned Chief Judicial Magistrate did not even consider the case diary before granting bail to the opposite party No.2. In support of his contention, the learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***Kanwar Singh Meena Vs. State of Rajasthan & Anr.*** reported in ***(2012) 12 Supreme Court Cases 180***. In the aforesaid report, the Hon'ble Supreme Court has laid down the principles applicable for cancellation of bail in the following words:-

"While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials 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. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

The learned Advocate for the petitioner has also referred to another decision of the Hon'ble Supreme Court in the case of **Neeru Yadav Vs. State of Uttar Pradesh & Anr.** reported in **(2014) 16 Supreme Court Cases 508**. In the said report, the Hon'ble Supreme Court observed as follows:-

"Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an

individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

Referring to a very recent decision of the Hon’ble Supreme Court in ***Centrum Financial Services Limited Vs. State of NCT of Delhi & Anr. (Criminal Appeal No.94 of 2022, Judgment delivered on 28th January, 2022)***, it is submitted by the learned Counsel for the petitioner that normally the High Court should not interfere with the order of granting bail. However, where the discretion to grant bail has been exercised without due application of mind and in contravention of the direction of this Court, such an order of granting bail is liable to be set aside.

Learned Advocate for the petitioner also refers to an order passed by this Court in CRM 4414 of 2021 on 27th January, 2022 where this Court cancelled the order of bail passed by the learned Magistrate.

Against the application for cancellation of bail, an affidavit-in-opposition filed on behalf of the opposite party No.2. Main contention of the opposite party No.2 is that when the cheques issued by her husband were dishonoured, the petitioner had the right to file an application under Section 138 of the Negotiable Instruments Act. On the contrary, the petitioner has lodged a written complaint in the local police station at a belated stage by suppressing the facts under which a sum of Rs.20,00,000/- were taken and it was attempted to be repaid. It is also submitted on behalf of the opposite party No.2 that in ***Ram Govind Upadhyay Vs. Sudarshan Singh*** reported in ***2002 SCC (Cri.) 688***, the Hon'ble Supreme Court has laid down the guideline for the grant of bail. These are: -

- (a) not only the nature of accusations but the severity of punishment in case of conviction and the nature of the supporting evidence,
 - (b) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant;
 - (c) prima facie satisfaction of the Court in support of charge,
- and

(d) frivolity and genuineness of the prosecution.

It is contended by the opposite party No.2 that the order of bail under the facts and circumstances of the case is not liable to be cancelled.

The petitioner has reiterated the fact contained in his application by filing affidavit-in-reply.

The learned Advocate for the opposite party No.2 submits that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. In support of his contention he refers to a decision of the Hon'ble Supreme Court in ***X vs. State of Telangana & Anr.*** reported in ***(2018) 16 Supreme Court Cases 511***. In the aforesaid decision, the Hon'ble Supreme Court has taken into consideration the ratio laid down in ***Kanwar Singh Meena (supra)***, ***Neeru Yadav (supra)*** and other cases.

In Paragraph 14 of the said report it is observed by the Hon'ble Supreme Court –

“**14.** In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court

in ***Dolat Ram V. State of Haryana*** observed that : (SCC pp. 350-51, para 4)

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

15. These principles have been reiterated by another two-Judge Bench decision in ***CBI v. Subramani Gopalakrishnan*** and more recently in ***Dataram Singh v. State of U.P.*** (*Subramani case, SCC pp. 303-04, Para 23*):

23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting

bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

Having heard the learned Counsel for the parties and on due consideration of the precedence relied on by the learned Counsel in support of their respective cases, this Court likes to record that Section 437 of the Code of Criminal Procedure confers wide power to the learned Magistrate subject to the exception contained in the subsequent subsection of Section 437 to grant bail to an accused. But while granting bail, the learned Magistrate is guided by the same considerations as other Courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the

victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents in its peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken in to account by the Court. The Court has to only opine as to whether there is a *prima facie* case against the accused or not. The Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments may cause prejudice to fair trial.

In the instant case, the petitioner has prayed for cancellation of bail of the accused on the ground that he was cheated by the accused persons. The accused persons did not make payment of the money which they took for giving employment of his son and secondly, custodial interrogation of the accused is necessary.

It is true that the learned Chief Judicial Magistrate did not call for the case diary at the time of hearing of the application for bail. However, from the documents filed by the *de facto* complainant with his objection for cancellation of bail, it is ascertained that the accused persons already admitted the fact of receiving money from the *de facto* complainant and in order to repay the said money, they issued two

cheques which were dishonoured. The said documents and the dishonoured cheques are the most important pieces of evidence to prove the charge against the accused persons.

Though the learned Chief Judicial Magistrate did not consider the case diary, no supervening circumstances have been made out by the petitioner to warrant the cancellation of the bail of the accused.

In view of such circumstances, I am not inclined to cancel the bail of the accused persons.

Prayer for cancellation of bail, is, therefore, **rejected**.

(Bibek Chaudhuri, J.)