

Form J(1)

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

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

CRR 822 of 2022

**Sahadev Das alias Sahadeb Das
Vs.
The State of West Bengal & Anr.**

Mr. Ayan Basu
Mr. Sandip Kumar Mondal
Mr. Sumit Routh
...for the petitioner

Mr. Ranadeb Sengupta
...for the State

Item No.15

Heard & Judgment on: 02.08.2022

Bibek Chaudhuri, J.

An order dated 2nd March, 2022 passed by the learned Additional Sessions Judge, First Court at Kakdwip canceling an order of bail in favour of the accused/petitioner on the ground that the

petitioner violated the conditions for bail is under challenge in the instant criminal revision. For proper and effective disposal of this revision it is necessary to state the following factual background:-

The opposite party No.2 /de facto complainant lodged a written complaint on 3rd August, 2021 alleging, inter alia, that on 28th July, 2021 at dead hours of night when the de facto complainant was alone sleeping in her room the accused persons trespassed into the room of the de facto complainant and committed rape upon her.

On the basis of the said complaint police registered Dholahat Police Station Case No.284 dated 3rd August, 2021 against the accused/petitioner. In course of investigation the petitioner was arrested and subsequently he was enlarged on bail by the learned Additional Sessions Judge, 1st Court, Kakdwip vide order dated 14th September, 2021 subject to the following conditions, viz., while on bail the accused/petitioner will not make any attempt to influence and tamper with the evidence. It is also directed that the accused/petitioner will attend the Court on regular basis without any default with further condition that the accused/petitioner shall not enter the jurisdiction of Dholahat Police Station till the completion of recording evidence of the victim /de facto complainant by the trial Court. Subsequently, on 30th January, 2022 the de facto complainant lodged a complaint against the petitioner that the petitioner was

freely moving within the jurisdiction of Dholahat Police Station after he was granted bail on 15th September, 2021 and he was threatening the de facto complainant with dire consequences if the de facto complainant fails to withdraw the written complaint filed by her against the accused.

On the basis of the said complaint police registered F.I.R. No.43 of 2022 under Sections 188/195A/506 of the Indian Penal Code.

The accused/petitioner was arrested on 2nd March, 2022. He was granted bail by the trial Court considering the fact of long detention of the accused in the Correctional Home since 31st January, 2022.

Surprisingly enough, on the self-same date when in a case for threatening and influencing the de facto complainant /petitioner to withdraw the earlier case under Sections 458/376/120B of the Indian Penal Code, his bail was cancelled in connection with Dholahat Police Station Case No.284 dated 3rd August, 2021.

It is contended by the learned advocate for the petitioner that when bail was granted in favour of the petitioner in a subsequent case having a specific allegation of threatening the de facto complainant, how on the same day order of bail was cancelled by the same Court in a previously instituted case under Sections 458/376/120B of the Indian Penal Code on the ground of violation of condition of bail, viz.,

the accused was threatening the de facto complainant after entering into the jurisdiction of Dholahat Police Station.

Mr. Sengupta, learned advocate for the State has supported the impugned order dated 2nd March, 2022 on the ground that the bail was granted in a subsequent case under Sections 188/195A/506 of the Indian Penal Code considering the period of detention of the accused. However, in respect of Dholahat Police Station Case No.284 dated 3rd August, 2021, the learned trial Judge cancelled the bail absolutely on different ground on prima facie satisfaction that the accused violated the condition for bail by entering into the jurisdiction of Dholahat Police Station and threatening the de facto complainant. Mr. Sengupta, learned P.P.-in-charge has submitted a report of service of notice of the instant proceeding through police as directed by this Court in its previous order. The report be kept with the record.

I have carefully perused the entire materials on record. Strangely enough the impugned order dated 2nd March, 2022 was passed without giving opportunity to the accused or his authorized representative on being heard. The learned trial Judge did not feel it prudent to consider the case diary of Dholahat Police Station Case No.43 of 2022. From the order sheet it is not ascertained as to whether the learned trial Judge came to a prima facie satisfaction that

the accused had really violated the condition for bail by entering into the jurisdiction of Dholahat Police Station and allegedly threatening the de facto complainant. It is needless to say that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted. Of course, interference or attempt to interfere with the due course of administration of justice by influencing the witnesses or threatening the de facto complainant with dire consequences if she did not withdraw her complaint in a previously instituted case are cogent and overwhelming circumstances where bail can be granted but there must be satisfaction to the effect in the order passed by the Court which granted bail to the accused or by the Court exercising power under Section 439(2) of the Code of Criminal Procedure. The decisions of the Hon'ble Supreme Court in **Dolat Ram and Others versus State of Haryana** reported in **(1995) 1 SCC 349** and **X versus State of Telangana and another** reported in **(2018) 16 SCC 511** may be relied on in this regard.

On perusal of the impugned order, this Court finds that the learned trial Judge did not give the opportunity of hearing to the accused. He did not peruse the case diary of the subsequent case instituted against the accused under Sections 188/195A/506 of the Indian Penal Code. He did not call for the case diary of both the cases. Only on the basis of oral submission made on behalf of the accused

his prayer for bail was cancelled on the ground that he violated the conditions for bail.

For the reasons stated above, this Court is of the view that the impugned order dated 2nd March, 2022 was passed without considering the relevant materials which are necessary for prima facie satisfaction of the trial Court. In view of such circumstances, the impugned order suffers from patent illegality and is, therefore, set aside.

The learned trial Judge is specifically directed to rehear the Criminal Misc. Case No.58 of 2022 after giving an opportunity to the accused /petitioner of hearing. The learned trial Judge is also directed to take into consideration that on 2nd March, 2022 itself he granted bail to the accused in the subsequent case under Sections 188/195A/506 of the Indian Penal Code. He is also directed to consider the case diary of both the cases.

The learned trial Judge is at liberty to rehear the Criminal Misc. Case No.58 of 2022 along with an application for bail, if any, that may be filed by the accused after disposal of the instant criminal revision.

With the above order the instant revision is disposed of.

(Bibek Chaudhuri, J.)

