

Form J(2)

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

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

**IA No.:CRAN/1/2021
in
CRR 737 of 2021**

**Nilmadhab Sarkar
Vs.
The State of West Bengal**

For the petitioner : Mr. Anirban Banerjee, Adv

**For the State : Mr. Swapan Banerjee, Adv.,
Mr. Suman De, Adv.**

**Heard &
Judgement on : 20.06.2022.**

Bibek Chaudhuri, J.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioner with a prayer to set aside Order No. 6 dated 16.02.2019 passed by the Learned Sessions Judge, Uttar Dinajpur in Criminal Misc. Case No. 2546/2018 arising out of G.R. Case No. 237/2014 under Sections 342/186/353/332/333/506/34 of the Indian Penal Code and the order

dated 11th March, 2019 passed by the Learned Chief Judicial Magistrate, Uttar Dinajpur issuing warrant of arrest against the petitioner.

Let me state the facts leading to the filing of the instant criminal revision in brief. The Learned Sessions Judge, Uttar Dinajpur vide order dated 16th February, 2019 allowed an application under Section 439(2) of the Code and cancelled the order of bail granted in favour of the petitioner by the Vacation Bench in Criminal Misc. Case No. 1936/2018. After the said order being passed the Learned Chief Judicial Magistrate, Uttar Dinajpur issued warrant of arrest against the accused/petitioner vide order dated 11th March, 2019.

It is not in dispute that the petitioner initially filed an application for anticipatory bail before the Learned Sessions Judge, Uttar Dinajpur which was rejected on contest on 13th May, 2014. Subsequently, he moved this Court in CRM No. 11847/2014 with the same prayer for anticipatory bail. The said application was also rejected on 15th January, 2015. The petitioner made an unsuccessful attempt on the third occasion when his Misc. Case No. 772/2016 under Section 438 of the Code was rejected by the Learned Sessions Judge on 17th May, 2016. After a lapse of two years the petitioner filed another application for anticipatory bail before the Learned Sessions Judge which was registered as Misc. Case No. 1902/2018. During the pendency of the said Misc.

Case he filed another Misc. Case being No. 1936/2018 before the Learned Vacation Bench and the said application was allowed on 30th October, 2018. The State subsequently moved an application before the Learned Sessions Judge under Section 439(2) of the Code of Criminal Procedure praying for cancellation of the order of bail granted to the petitioner. The Learned Sessions Judge allowed the said petition in Criminal Misc. Case No. 2546/2018 passing impugned order dated 16th February, 2019.

It is submitted by the Learned Advocate for the petitioner that in paragraph 4 of the instant application the petitioner stated all such facts and he has not suppressed anything. It is further contended by the Learned Advocate for the petitioner that at the time of hearing of the application for cancellation of bail the Learned Public Prosecutor-in-Charge was equipped with the case diary before the Learned Sessions Judge but he did not inform that the applications filed by the petitioner for anticipatory bail were rejected when Criminal Misc. Case No. 1936/2018 was heard by the Vacation Bench the said fact was also not mentioned by the Learned Public Prosecutor-in-Charge. At this stage, the State of West Bengal cannot take such objection only to frustrate the petitioner from enjoying his fundamental liberty.

Referring to a decision reported in ***Gurcharan Singh & Ors. – Vs.- State (Delhi Administration) : AIR 1978 SC 179*** it is submitted by the Learned Advocate for the petitioner that if a person was admitted to bail by a Court of Session, it is only the Court of Sessions that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody is lifted in the Code of Criminal Procedure, 1973 under Section 439(2). Under Section 439(2) of the Code of Criminal Procedure a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options, it may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge

granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.

On careful perusal of the aforesaid judgment it appears to this Court that the Hon'ble Supreme Court has laid down that when an order of bail is granted by the High Court, no application under Section 439(2) of the Code of Criminal Procedure can be entertained by the learned Sessions Judge except under certain new circumstances having been arisen which were not earlier known to the State. The situation of this case is absolutely different. The case was registered in the year 2014. Till this date by filing one after another application the accused evaded the jurisdiction of the Criminal Court and managed to stall the trial for about eight years. It is not in dispute that at the time of filing of the application the accused did not state that his earlier application for anticipatory bail was rejected. At present it is obligatory to state the said fact on affidavit. He had sworn false affidavit before the learned Sessions Judge. When it was noticed by the learned Sessions Judge, he rejected the prayer for bail. I do not find any illegality in the instant order. The decision of

Gurcharan Singh is not applicable under the facts and circumstances of this case. I do not find any merit in the instant revision. The revisional application is, thus, **dismissed** on contest. However, for ends of justice the petitioner is directed to surrender before the learned Chief Judicial Magistrate within 15 days from the date of the order and in such case the learned Chief Judicial Magistrate shall consider the application for bail of the accused under Section 437 of the Code of Criminal Procedure in accordance with law.

(Bibek Chaudhuri, J.)