

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRM (DB) 1236 of 2022

Bhola Prasad Sah

Versus

The State of West Bengal & Others.

For the petitioner : Mr. Y.J. Dastoor, Adv.
: Mr. Phiroze Edulji, Adv.
: Mr. Gaganjoyt Singh, Adv.
: Ms. Samira Grewal, Adv.

For the State : Mr. Sudip Ghosh
: Mr. Apurba Kr. Datta

For the Opposite
Party No. 2 and 3 : Abhra Mukherjee, Adv.
: S.N. Bhattacharya, Adv.
: Sauradeep Dautta, Adv.

Heard on : August 31, 2022

Judgement on : September 6, 2022

Md. Shabbar Rashidi, J.:

1. The petitioner along with Opposite Party no. 3 and others formed a trust under the name and style of 'Foundation- Life

for All' with a view to establish, promote, maintain and grant financial assistance to hospitals and other medical institutions providing medical relief to the general public and other benevolent works. The trust, in furtherance of its objectives, took control of a High School in Bihar where wife of Opposite Party no. 3 was appointed as a teacher, allegedly, without approval of the board of trustees. Later on, the trust took up the project of starting a CBSE programme which was accomplished with setting up a CBSE school in Sankraili, in Bihar. It was alleged that with the setting up of the said school, the earlier project of Shri Manna Lal Sah Harijan High school ought to have been closed but the wife of Opposite Party no. 3 continued with the said school, rather they allegedly closed the CBSE school.

2. The opposite parties are also alleged to have purchased immoveable properties out of the fund of the trust but they did not take any steps to get the said properties mutated in the name of the trust. Rather, the said properties purchased out of the fund of the trust, were illegally mutated in the name of Opposite Party no 3. Not only that, the properties purchased by the trust were utilised by Opposite Party no. 3

and others without any authority in this regard and the usufructs were never credited to the trust. Opposite Party no 3 is also alleged to have sold certain properties belonging to the trust without any authority. He along with other trustee ignored his responsibilities to get the properties of the trust mutated in its name. Opposite Party no 3 was also directed to hand over the title deeds to one Amit Aggarwal, whereas Opposite Party no 2 was asked to provide closing balance to the Chartered Accountant, Abhishek Kedia for the purpose of internal audit. However, Opposite Party no 3 in connivance with Opposite Party no 2 acted against the interest of the trust and the requisite documents were never provided. For the aforesaid reasons, Katihar (s) PS case No.464 of 2017 u/s 406/420/468/471/120B IPC was initiated against Opposite Party no 3.

3. The petitioner was authorised to take legal action to obtain account of the trust properties together with that for recovery of the title documents. The petitioner, accordingly, initiated another case being Katihar (S) P.S. case No. 838 of 2017 u/s 323/406.420/468/471 IPC against Opposite Party no. 3 for the alleged execution of a forged and false deed of gift in

favour of Anand Marg. Initially the Opposite Party no 3 is said to have agreed to vacate the house owned by the present petitioner but later on, Opposite Party no 3 came up with the purported false and forged deed of gift allegedly executed by the father of the petitioner and Opposite Party no 3, Late Manna Lal Sah. On the contrary, Opposite Party no 3 has filed some civil suits with a view to remain in continued possession of the gifted properties.

4. Opposite Party no 2 is said to have not cooperated with the trust by not supplying the accounts of the trust for the purpose of audit. The petitioner filed another case being Barari P.S. case No. 407 of 2017 u/s 323/280/420/467/468/471/504/506 IPC against Opposite Party no 3. The petitioner filed another case being Barari P.S. case No. 173 of 2018 u/s 323/280/420/467/468/471/504/506 IPC against Chhattu Lal Sah and others alleging unauthorized and illegal sale of the properties and assets belonging to the trust. Several other cases were filed by the petitioner against opposite parties and others alleging misappropriation of trust properties, illegally withholding of the title and other documents and funds

belonging to the trust. There were removal of the trustees and the Chartered Accountants and auditors of the trust.

5. In the aforementioned factual backdrop, the case involved in this proceeding was lodged by the petitioner being Park Street P.S. Case No.127 of 2021 u/s 34/406/467/468/471 IPC.

6. In pursuance to a notice u/s91, the petitioner supplied the relevant documents to the investigating agency and the case is still under investigation.

7. The opposite parties moved an application under the provisions of section 438 of the Code of Criminal Procedure before learned Chief Judge, City Sessions Court. The learned Court, upon hearing the opposite parties and the state of West Bengal and considering the facts and circumstances of the case, in detail, granted anticipatory bail to the opposite parties herein by the impugned order dated 08.02.2022 passed in Criminal Misc. Case No.20 of 2022. While granting such bail, the learned Court appears to have considered the long standing feud between the petitioner and the opposite party no.3 herein, who are full brothers in order to wring control

over the trust standing in the name of **‘Foundation- Life for All’**.

8. The instant application under section 439 (2) of the Code of Criminal Procedure, has been filed by the petitioner seeking cancellation of the bail granted to the opposite parties.

9. It has been submitted that custody of the private opposite parties are very much required for the purpose of investigation of the case as they are the essential link in the chain of fraudulent transactions. The order granting bail to the opposite parties has also been assailed on the ground that the learned Court did not consider the fact that no steps were taken by the investigating officer to freeze the bank accounts under embezzlement and that various title deeds concerning the trust properties, are still under the custody and control of the opposite parties. The learned Court is alleged to have erred in not considering that the embezzled money is akin to public money. It has also been stated that the investigating officer has also conceded and not taken up the investigation of the case properly. The impugned order has further been sought to be cancelled in order to achieve recovery of various title deeds. Furthermore, it has been alleged that post bail

conduct of the opposite party/accused is thoroughly unsatisfactory.

10. Opposite party no.3 with his son is said to have trespassed into the house of petitioner at Sakraili and stolen away various belongings of the petitioner resulting in a written complaint to Semapur P.S. and Superintendent of Police, Katihar.

11. In course of hearing, learned Advocate for the petitioner argued in support of his contentions in the petition with reference to the requirement of custodial interrogation for the purpose of recovery of title deeds as well as the embezzled money. Our attention was also drawn to the post bail conduct of the opposite parties.

12. In support of his contention, Learned Senior Advocate has placed reliance on the case of **Deepak Yadav versus State of UP and Another** reported in **2022 SCC Online SC 672**. It has been submitted that the learned Court while granting bail, erred in holding that the offences complained of, were the outcome of long pending civil disputes between brothers and were of a nature warranting their release on bail.

13. Learned Senior Advocate has drawn our attention to paragraph 31 of the above cited decision which runs as:

“31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:—

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.*
- d) Where bail has been granted on untenable grounds.*
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”*

14. True it is, that cancellation of bail cannot be limited to the occurrence of supervening circumstances. However, in course of hearing or in the petition, nothing has been brought forth that the impugned order was passed ignoring relevant facts which ought to have been taken into consideration and in consideration of irrelevant facts or that learned bail Court ignored the influential position of the opposite parties/accused. In fact, no case has been made out by the petitioner to attract any of the guiding principles laid down in paragraph 31 of the aforementioned decision. On the contrary, paragraph 30 of the above decision deals with the normal guidelines for cancellation of a bail granted to an accused. Hon'ble Apex Court held that,

“30. This Court has reiterated in several instances that 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 trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two -Judge Bench of this Court in Dolat Ram v. State of Haryana laid down the grounds for cancellation of bail which are:—

interference or attempt to interfere with the due course of administration of Justice
evasion or attempt to evade the due course of justice
abuse of the concession granted to the accused in any manner
Possibility of accused absconding
Likelihood of/actual misuse of bail
Likelihood of the accused tampering with the evidence or threatening witnesses.”

15. It is also to be considered that the instant application for cancellation of bail has come from the side of the private petitioner instead of the state filing such application owing to misuse or otherwise of the condition of bail. No case has been made out that the opposite parties/accused are interfering with the investigation or trying to evade the due course of justice. There is also nothing that the opposite parties are likely to abscond. In fact, the petition filed on behalf of the petitioner also does not make out a case to attract any of the guidelines laid down in the said paragraph. In order to bring the case into one of the guiding principles laid down justifying cancellation of bail, the petitioner has drawn our attention to the allegation of alleged trespass in the house of the petitioner in Bihar and theft of valuables there from, whereby, it has been endeavoured to persuade that the opposite parties are guilty of misuse of the privilege of bail. Though, it has been

stated that a police complaint has been lodged in connection with the incident but neither the details of police case initiated on such complaint nor the description of stolen articles, have been disclosed in the petition. If that be so, the possibility of a desperate attempt by the petitioner to make out a case validating cancellation of bail granted to the opposite parties, may not be ruled out. There is no allegation from the side of investigating officer to the effect that the opposite parties are not cooperating in the investigation or have misused the privilege of bail extended to them.

16. It is not denied that the petitioner and opposite party no. 3 are full brothers. It is evident from the case narrated in the petition that the said opposite party has acquired certain properties by dint of a gift deed executed by the father of petitioner and opposite party no. 3, which is under challenge from the petitioner. Therefore, existence of property disputes between the brothers, as observed by learned bail granting Court cannot be said to be unjust or unfounded. In fact, the entire matter in controversy centres around the properties alleged to be held by the trust. Admittedly, there is series of litigations, both civil and criminal, between the parties.

17. Furthermore, the impugned order goes to show that the present petitioner also appeared before learned Chief Judge, City Sessions Court to oppose the prayer of bail by the opposite parties. Similar objections were raised and duly considered by learned Sessions Judge while granting bail to the opposite parties. The case made out in the petition appears to be an endeavour by the petitioner to squeeze control over the properties, title documents and funds allegedly belonging to the trust.

18. In view of the discussions made hereinbefore, we are of the opinion that the petitioner has not been able to bring the case into one of the guiding principles laid down by the Hon'ble Apex Court in the case of Deepak Yadav versus State of UP and Another (Supra) justifying cancellation of bail and as such, the prayer for cancellation of bail of the opposite parties cannot be accorded and is liable to be dismissed.

19. Accordingly, the instant CRM (DB) 1236 of 2022 is thus, disposed of.

[MD. SHABBAR RASHIDI, J]

20. I agree.

[DEBANGSU BASAK, J.]