

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.M. (DB) 1372 OF 2022

**The State of West Bengal
VS.**

Sisir Kumar Mahato @ Sisir Mahato

For the petitioner : Mr. Rudradipta Nandy, Ld. APP
Ms. Sreeparna Das

For the opposite party : Mr. Arindam Jana
Mr. Soumajit Chatterjee

Heard on : July 18, 2022

Judgment on : July 18, 2022

DEBANGSU BASAK, J.:-

1. The application for cancellation of anticipatory bail is at the behest of the State.
2. Anticipatory bail was granted to the private opposite party by the order dated September 29, 2021 passed in CRM 2582 of 2021.
3. The relevant portion of the order granting anticipatory bail in favour of the private opposite party is as follows:

“It appears from the records that the police submitted charge-sheet where the police is not proceeding

against the Superintendent of the Home on the ground there is no sanction to prosecute to the Superintendent although, the Superintendent is named as one of the perpetrators in the statement recorded under Section 164 of the victim girl. The petitioner is also named as a perpetrator in the statement recorded under Section 164 of the Code of Criminal procedure.

Considering such materials on recorded, since the police submitted charge-sheet, we are inclined to grant anticipatory bail to the petitioner.”

4. Learned Advocate appearing for the State submits that the police filed charge sheet and the supplementary charge sheet. There was sanction to prosecute the Superintendent of the Home. The prayer for anticipatory bail of the Superintendent of the Home was rejected by this Hon'ble Court. Against such order of rejection a special leave petition was filed before the Hon'ble Supreme Court. In such special leave petition, an order dated April 8, 2022 was passed by the Hon'ble Supreme Court calling upon the Director General of Police of the State of West Bengal to file an affidavit explaining the inaction of the police subsequent to the cancellation of the anticipatory bail.
5. Learned Advocate appearing for the private opposite party herein relies upon 2020 (5) SCC 1 (*Sushila Agarwal vs. State (NCT of Delhi) & Ors.* and submits that the present application is not maintainable. He refers to the prayer made in the application. He submits that the application is in the nature of review which is not permissible. There is no supervening circumstance for the grant of anticipatory bail on September 29, 2021 warranting this Hon'ble

Court to cancel the anticipatory bail of the private opposite party. The private opposite party complied with the notice under Section 41A of the Code of Criminal Procedure. There is no allegation of post bail misconduct against the private opposite party. No new material came on record to cancel the anticipatory bail granted.

6. Learned Advocate for the private opposite party relies upon (2014) 10 Supreme Court Cases 754 (*Abdul Basit alias Raju & Ors. Vs. Mohd. Abdul Kadir Chaudhary & Anr.*, and (2021) 10 Supreme Court Cases 773 (*Satender Kumar Antil vs. Central Bureau of Investigation & Anr.*). He submits that power of review of the order granting bail is not available.
7. A complaint was lodged with the Purulia Sadar Women Police Station where, a First Information Report dated December 25, 2020 being Purulia Sadar Women Police Station Case No.12 of 2020 under Section 10 of the Protection of Children from Sexual Offences Act, 2012 was registered.
8. The complaint was lodged by a lady Sub-Inspector of the Police Station. The private opposite party herein and the Superintendent of the Juvenile Home are named in the complaint. The complaint was to the effect that on December 24, 2020 the learned Additional District & Sessions Judge, visited the juvenile home where she gathered information regarding the girls and inmates of the Home and submitted a preliminary report to the learned District Judge, Purulia. In such report, it is stated that one of the victims went to

the quarter of the Superintendent situated inside the compound of the Home where her modesty was outraged by an unknown boy in presence of the Superintendent who threatened her not to disclose the incident. The report also spoke of another inmate whose modesty was outraged on various occasions.

9. The police filed charge sheet in the police case in February 2, 2021 with leave to file a supplementary charge sheet after obtaining leave to prosecute the Superintendent. The police in the first charge sheet did not proceed against the Superintendent of the Home. The private opposite party filed an application for anticipatory bail being CRM 2582 of 2021. The police in the interregnum obtained permission to prosecute the Superintendent and filed a supplementary charge sheet. These facts were not informed to the Court on September 29, 2021 when the application for anticipatory bail of the private opposite party came up for hearing. In such circumstances anticipatory bail was granted in favour of the private opposite party herein on September 29, 2021 on the grounds as noted in the order quoted above.
10. The Superintendent of the Home approached this Hon'ble Court with a prayer for anticipatory bail. Such prayer was opposed. While considering the prayer for anticipatory bail, it was discovered that there was sanction to prosecute the Superintendent of the Home granted by the State which was available in the case diary.

11. Prayer for anticipatory bail of the Superintendent of the Home was rejected by the order dated February 4, 2022 passed in CRM 5162 of 2021. Being aggrieved by such order of rejection, a special leave petition was moved before the Hon'ble Supreme Court by the Superintendent of the Home. In such special leave petition an order dated April 8, 2022 was passed where the following observation was made:

"3. We find that FIR No.12/2020 was registered on 25-12-2020 against the petitioner, who is the Superintendent/in-charge of Juvenile Home for girls for the offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012.

4. The role attributed to the petitioner is that she used to invite the victim girls of the Juvenile Home to her quarters and caused commission of aggravated sexual assault against them in her presence.

5. Taking into consideration the serious allegations levelled against the petitioner, on 4-2-2022 the High Court has rejected the anticipatory bail application filed by the petitioner.

6. The petitioner has challenged the said impugned Order passed by the High Court before us.

7. It is unfortunate that even after dismissal of her anticipatory bail application, the concerned Police Authority has not made any effort to apprehend the petitioner – accused so far.

8. In view of the above, issue notice to the Advocate General of the State of West Bengal as also to the Director General of Police of the said State to file an affidavit within a period of one week from today, explaining the inaction on the part of the Police.

9. List the matter after one week."

12. It is submitted on behalf of the State that subsequent to the order dated April 8, 2022 passed by the Hon'ble Supreme Court, the Superintendent of the Home was arrested. The police initiated

- department proceedings against the Investigating Officer filing the first charge sheet as also the Investigating Officer who filed the second charge sheet. Such departmental proceedings are pending.
13. In the facts of the present case, there are statements recorded under Section 164 of the Code of Criminal Procedure of the victim girls implicating the private opposite party. The statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure also implicates the Superintendent of the Home. They stand on the same footing.
 14. Sanction to prosecute the Superintendent of the Home was obtained on July 14, 2021. Police filed a supplementary charge sheet on August 13, 2021. These facts were not drawn to the notice of the Court when the order dated September 29, 2021 was passed. These facts came to light when the Superintendent applied for anticipatory bail in CRM 5162 of 2021. On discovery of such facts the prayer was refused by the order dated February 4, 2022.
 15. The Court is informed that the private opposite party stands implicated in the charge sheet filed in the jurisdictional Court.
 16. The private opposite party stands in the same footing as that of the Superintendent of the Home so far as the statement under Section 164 of the Code of Criminal Procedure of the victim girl is concerned. Both the Superintendent of the Home and the private

opposite party are named in the charge sheet as perpetrators of the offence. The Superintendent of the Home was arrested.

17. *Sushila Agarwal (supra)* is of the view that a High Court or the Superior Court can cancel a bail or anticipatory bail under Section 439(2) of the Code of Criminal Procedure once a case for such purpose is made out. *Abdul Basit alias Raju & Ors.(supra)* lays down the scope of power as to cancellation of the bail granted. Similarly, *Satender Kumar Antil (supra)* speaks of the guidelines with regard to the exercise of discretion by a Court while cancelling bail. Largely, an order granting bail can be cancelled if the order granting bail is found to be perverse, not being justified, obtained by gross misrepresentation of facts, misleading the Court, the accused indulging in fraud, the post bail misconduct of the accused, the accused threatening the witness or interfering in the course of investigations. The grounds spoken herein are merely illustrative. Essentially, a compelling ground must exist for cancellation.
18. In the facts of the present case, the order granting anticipatory bail to the private opposite party cannot be said to be justified. The private opposite party was granted anticipatory bail on the ground that the police was not proceeding against the Superintendent of the Home although, the Section 164 statement of the victim implicates both the Superintendent of the Home and the private opposite party. At the material point of time it was not drawn to

the notice of the Court that a supplementary charge was filed against the Superintendent after obtaining permission for prosecution.

19. As noted above, the prayer for anticipatory bail of the Superintendent of the Home was rejected. The Hon'ble Supreme Court made the observations as noted above, in respect of the Superintendent of the Home. The Superintendent of the Home was arrested. The present private opposite party stands on the same footing as that of the Superintendent of the Home.
20. In such circumstances, we cancel the anticipatory bail granted in favour of the private opposite party by the order dated September 29, 2021 passed in CRM 2582 of 2021.
21. **C.R.M. (DB) 1372 of 2022** is disposed of.

(Debangsu Basak,J.)

22. I Agree.

(Bibhas Ranjan De, J.)