

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

CRM (DB) 1533 of 2022
Central Bureau of Investigation, Special Crime Branch, Kolkata
Vs.
Shri Safikul Kaji @ Beji & Anr.

With

CRM (DB) 1536 of 2022
Central Bureau of Investigation, Special Crime Branch, Kolkata
Vs.
Shri Dodo Molla @ Dud Ali Molla

With

CRM (DB) 1538 of 2022
Central Bureau of Investigation, Special Crime Branch, Kolkata
Vs.
Shri Kurman Molla @ Kurban Molla & Ors.

With

CRM (DB) 1542 of 2022
Central Bureau of Investigation, Special Crime Branch, Kolkata
Vs.
Shri Momrej Molla & Ors.

With

CRM (DB) 1544 of 2022
Central Bureau of Investigation, Special Crime Branch, Kolkata
Vs.
Shri Rakhibul Ali Molla & Ors.

For the Petitioner/CBI : Mr. Billwadal Bhattacharyya, Ld. Asstt. SG
Mr. Kallol Mondal , Adv.

For the Opposite Parties in : Mr. Souvik Mitter, Adv.
CRM (DB) 1533 of 2022 Mr. Angshuman Chakratory, Adv.
Mr. Shashanka Shekhar Saha, Adv.

For the Opposite Parties in : Mr. Angshuman Chakratory, Adv
 CRM (DB) 1536 of 20222 Mr. Shashanka Shekhar Saha, Adv.
 CRM (DB) 1538 of 20222
 CRM (DB) 1542 of 20222
 CRM (DB) 1544 of 20222

Heard on : July 15, 2022
 Judgement on : July 25, 2022

DEBANGSU BASAK, J.:-

1. Central Bureau of Investigation (CBI) has applied for cancellation of the orders of anticipatory bail passed by the Learned Sessions Judge, Alipore. Five applications for cancellation of anticipatory bail have been heard analogously as they emanate out of the same police case.
2. Learned Advocate appearing for the CBI has submitted that, CBI took over investigations of a First Information Report bearing No. 325 of 2021 dated May 3, 2021 of Sonarpur Police Station, District South 24 Parganas, pursuant to and in terms of the order of the Hon'ble High Court dated August 19, 2021 passed in a public interest litigation. He has submitted that, subsequent to the Central Bureau of Investigation taking over investigations, the Central Bureau of Investigation has come across materials which necessitated initiation of proceedings for cancellation of the order of anticipatory bail granted in favour of the private opposite parties. He has referred to the materials in the case

diary. In particular, he has referred to statements of two eye witnesses recorded under Section 164 of the Criminal Procedure Code on July 7, 2021. He has also referred to statements of two victims of the incident. He has also referred to statements recorded under Section 161 of the Criminal Procedure Code on May 5, 2021 of the eye witness and the widow of the deceased. He has referred to statements of other eye witnesses and victims recorded under Section 161 of the Criminal Procedure Code. He has contended that, CBI is now in possession of new material to implicate all of the private opposite parties. He has referred to the severity of offence and the involvements of the private opposite parties therein.

3. Learned advocate appearing for CBI has relied upon **1978 Volume 1 Supreme Court Cases 118 (Gurcharan Singh and Others vs. State (Delhi Admn.))** and **2001 Volume 6 Supreme Court Cases 338 (Puran vs. Rambilas and Another)**. He has contended that, the Learned Judge granting the prayer for anticipatory bail to the private opposite parties erred in doing so. The Learned Judge did not consider all the relevant materials at the time of granting the prayer for anticipatory bail. Moreover, the CBI

has come across new and further incrementing materials against the private opposite parties. He has submitted that the anticipatory bail granted in favour of the private opposite parties should be cancelled.

4. Learned advocate appearing for the private opposite parties has submitted that, the present application is not maintainable. CBI had approached the Sessions Court for the purpose of cancellation of the order of anticipatory bail and that such application was rejected on January 13, 2022. Therefore, the CBI cannot reagitate the same issue before the Hon'ble Court. According to him the present application is not maintainable.
5. Learned advocate appearing for the private opposite parties has contended that none of the private opposite parties are guilty of violating any of the conditions of the anticipatory bail. The CBI has not been able to establish any such violations. Moreover, CBI has not claimed that any of the private opposite parties has violated any of the conditions of the order granting anticipatory bail.
6. Learned advocate appearing for private opposite parties has submitted that, CBI has not placed any supervening circumstances on record to require cancellation of the

anticipatory bail granted to his clients. He has drawn the attention of the Court to the order dated July 23, 2021 granting anticipatory bail and contended that, the Learned Sessions Judge considered all the materials in the case diary and had come to a finding with regard to the requirement to grant the anticipatory bail to the private opposite parties. It cannot be said that the Learned Sessions Judge had exercised discretion wrongly.

7. Learned advocate appearing for the private opposite parties has submitted that, there have been two charge sheets filed in the case. Till date, CBI has not made any allegation that any of the private opposite parties violated any of the conditions of the order granting anticipatory bail.
8. Learned advocate appearing for the private opposite parties has submitted that, the conditions required to satisfy to cancel a bail are different than those granting bail or anticipatory bail. In support of such contentions, he has relied upon **2020 Volume 16 Supreme Court Cases 752 (Ketan Suresh Pawar and Another vs. Yuvraj Sandeepan Sawant and Another), 2018 Volume 16 Supreme Court Cases 511 (X vs. State of Telangaa and Another), 2020 Volume 2 Supreme Court Cases 743**

(Myakala Dharmarajam and Others vs. State of Telangana and Another) and **1995 Volume 1 Supreme Court Cases 349 (Dolat Ram and Others vs. State of Haryana)**. He has submitted that the applications of cancellation of anticipatory bail should be dismissed.

9. A complaint was lodged with regard to an incident of murder on May 2, 2021 with the Sonarpur Police Station (District South 24 Parganas) which was registered as FIR No. 325 of 2021 by such police station. The police had submitted a charge sheet bearing No. 556/2021 under Section 324/325/326/307/302/34 of the Indian Penal Code against sixteen accused on July 30, 2021.
10. CBI had taken up the further investigation with regard to such police case on September 1, 2021. After completion of further investigation, CBI had filed a supplementary charge sheet No. 22 dated December 31, 2021 on January 3, 2022, inter alia, under Section 143/144/147/148/149/323/324/325/326/307/449/450/451/452/364/302 of the Indian Penal Code read with Section 120B and 34 of the Indian Penal Code, 1860 against seventeen accused.

11. On July 23, 2021, the private opposite parties had approached the Learned Sessions Judge, South 24 Parganas, Alipore and obtained an order of anticipatory bail in respect of same police case.
12. The Learned Sessions Judge while granting anticipatory bail to the private opposite parties had recorded that, he perused the case diary including the post mortem examination report, statement recorded under Section 161 of the Criminal Procedure Code of the witness and other materials on record. The Learned Judge had recorded that, he perused the order dated July 17, 2021 passed in connection with CRM 307 of 2021.
13. Learned Advocate appearing for CBI has contended that there is an application for cancellation of the bail granted by the order dated July 17, 2021 passed in CMC No. 307 of 2021 pending before the Coordinate Bench.
14. As noted above, two charge sheets had been filed by the investigating authorities, one on July 30, 2021 by the West Bengal Police and the other on January 3, 2022 by the CBI. In the interregnum, the private opposite parties had been enlarged on anticipatory bail by the order dated July 23, 2021 passed by the Sessions Court.

15. CBI had applied before the Sessions Court for cancellation of the order of anticipatory bail granted to the private opposite parties. Such application for cancellation had been rejected by the order dated January 13, 2022. It appears from such order that, CBI had approached the Sessions Court for the purpose of cancellation of the anticipatory bail on the ground of post bail misconduct of the private opposite parties. In such context, the Learned Sessions Judge had by the order dated January 13, 2022 not found any post bail misconduct on the part of the private opposite parties and rejected the prayer for cancellation of the anticipatory bail.
16. **Gurcharan Singh and Others (supra)** has noted the difference between Section 498(2) of the Code of Criminal Procedure and Section 439(2) of the present Code of Criminal Procedure. It has held as follows:-

“Under Section 439(2) of the new Code 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 a 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-a-vis the High Court.”

17. ***Dolat Ram and Others (supra)*** has held as follows:-

“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, already granted. Generally speaking, the grounds for cancellation of 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

18. **Puran (supra)** has held that when Section 439(2) of the Criminal Procedure Code grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of orders passed by the Courts of Sessions. It has further observed that, one of the grounds for cancellation bail would be whereby ignoring of material and evidence on record a perverse order granting bail was passed in a heinous crime or where the order granting bail is without reasons.
19. **X (supra)** has taken note of **Dolat Ram and Others (supra)** while dealing with the distinction between rejection

of bail and the cancellation of a bail it has observed as follows :-

“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 [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] 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, already granted. Generally speaking, the grounds for cancellation of 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 [CBI v. Subramani

Gopalakrishnan, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] and more recently in Dataram Singh v. State of U.P. [Dataram Singh v. State of U.P., (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675 : (2018) 2 Scale 285] : (Subramani case [CBI v. Subramani Gopalakrishnan, (2011) 5 SCC 296 : (2011) 2 SCC (Cri) 618] , 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.”

20. While dealing with the factors to be considered in respect of cancellation of bail, ***Myakala Dharmarajam and Others (supra)*** has held as follows :-

“8. In Raghubir Singh v. State of Bihar [Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 : 1986 SCC (Cri) 511] this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material 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 [Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180 : (2013) 4 SCC (Cri) 614] .”

21. **Ketan Suresh Pawar and Another (supra)** has refused to cancel bail granted to an accused on the ground, inter alia, that there was no material on record to indicate that any of the conditions imposed while granting bail had been violated.
22. The private opposite parties have raised the issue of maintainability of the present petition. In the facts of the present case, the private opposite parties were enlarged on anticipatory bail by the Learned Sessions Judge on July 23, 2021. CBI had filed an application for cancellation of the order of anticipatory bail which was rejected on January 13, 2022. Since the application for cancellation made before the Sessions Court which initially passed the order granting anticipatory bail, was rejected, the private opposite parties have contended that the present application is not maintainable.

23. The Sessions Court while considering the application for cancellation, had limited itself to the post bail misconduct of the private opposite parties. The Sessions Court could not and, in the facts of the present case, did not take into consideration the alleged perversity of the order granting anticipatory bail. CBI had the option of applying for cancellation of the anticipatory bail on the ground of post bail misconduct, before the Learned Sessions Judge. They also had the option of applying for cancellation on the ground of perversity of the order granting the anticipatory bail, post bail misconduct and discovery of new materials by the High Court. CBI has applied herein on the ground inter alia of perversity of the order granting anticipatory bail. This Court being a 'Superior Court' than the Sessions Court has the jurisdiction to entertain an application under Section 439(2) of the Criminal Procedure Code in respect of an order of anticipatory bail granted by the Session Court on the ground of perversity of the order, discovery of new materials and/or post bail misconduct. Therefore, the present application has to be held to be maintainable.

24. As noted herein before , the Learned Sessions Judge had granted anticipatory bail to the private opposite parties

on July 23, 2021. As on that date, there were two statements recorded under Section 164 of the Criminal Procedure Code of two eye witnesses implicating all the private opposite parties in the offences of aggravated assault on them and the murder of the deceased, in the case diary. Such statements under Section 164 of the Criminal Procedure Code of the two eye witnesses had been recorded on July 7, 2021. The case diary had also a statement recorded under Section 161 of the Criminal Procedure Code of the widow of the deceased who was also an eye witness to the incident. The statement of the widow of the deceased recorded under Section 161 of the Criminal Procedure Code had also implicated the private opposite parties in the incident of murder. Over and above the materials noted herein the case, as on the date of the order granting anticipatory bail other materials implicating the private opposite parties.

25. The order dated July 23, 2021 passed by the Learned Sessions Judge does not allude to the statements recorded under Section 164 of the Criminal Procedure Code or the statement of the eye witness recorded under Section 161 thereof. The order has recorded that, the post mortem

examination report, statement recorded under Section 161 of the Criminal Procedure Code and other materials had been taken into consideration. The 'other materials' of the case diary that have been taken into consideration is not specified in the order. The order also records that a co-accused person had been granted bail. None of the materials in the case diary as noted above implicating the private opposite parties in the incident of murder had been taken into consideration by the Learned Sessions Judge. At least, there is no reflection in the order dated July 23, 2021 that the Learned Judge had taken such facts into consideration.

26. There has to be compelling reasons for the cancellation of an order of anticipatory bail or bail. The authorities cited above have noted that, there cannot be a strait jacket formula for cancellation of an order of anticipatory bail. Illustratively speaking, an order of anticipatory bail can be cancelled in the event, it is established that, the order was unjustified, suffers from perversity, new materials have come about implicating the accused who were enlarged, or where the accused were guilty of post bail misconduct.

27. In the facts of the present case, two injured victims of the incident had recorded statements both under Sections 161 and 164 of the Criminal Procedure Code. Basudeb Adhikari had suffered grievous hurt in the incident. He has implicated all the private opposite parties in the incident of murder of the deceased in statements recorded under Sections 161 and 164 of the Criminal Procedure Code. He has narrated how the private opposite parties entered into his house, physically assaulted him, causing grievous hurt to him, and caused destruction of his house. He has narrated how the private opposite parties had actively participated in assaulting the victim with brick resulting in his death.

28. Sankar Adhikari, another victim and eye witness to the incident of murder has also recorded a statement under Section 164 of the Criminal Procedure Code and has narrated how the private opposite parties were involved in the incident. Sankar Adhikari, the injured eye witness had suffered grievous hurt on his head.

29. The statement of Basudeb Adhikari and Sankar Adhikari under Section 164 of the Criminal Procedure Code had been recorded on July 7, 2021. The case diary as on the

date of the order granting anticipatory bail had statement of Sudip Adhikari recorded under Section 164 of the Criminal Procedure Code on October 26, 2021 implicating all the private opposite parties.

30. Smt. Swarnalata Adhikari has recored a statement under Section 161 of the Criminal Procedure Code on September 9, 2021 implicating the private opposite parties. She is the widow of the deceased and an eye witness to the incident.

31. Clearly on the ground of materials available in the case diary as on the date of the order granting anticipatory bail, it can be said that there were at least two statements recorded under Section 164 of the Criminal Procedure Code of two injured eye witnesses who had implicated all the private opposite parties. Statement of injured eye witnesses recorded under Section 164 of the Criminal Procedure Code has to be given due emphasis while considering an application for grant of anticipatory bail.

32. In the facts of the present case, a person had been murdered while several persons suffered grievous hurt.

33. In such circumstances, we find that the order granting anticipatory bail to the private opposite parties suffers from

perversity. We, therefore, cancel the orders of anticipatory bail granted in favour of the private opposite parties in all the applications. We also cancel all consequential steps taken subsequent to the order granting anticipatory bail to the private opposite parties in so far as they relate to the private opposite parties being enlarged on bail. The private opposite parties in all the applications for cancellation will surrender before the Jurisdictional Court forthwith; in default appropriate steps be taken.

34. CRM (DB) 1533 of 2022, CRM (DB) 1536 of 2022, CRM (DB) 1538 of 2022, CRM (DB) 1542 of 2022, CRM (DB) 1544 of 2022 are disposed of accordingly.

[DEBANGSU BASAK, J.]

35. I Agree.

[BIBHAS RANJAN DE, J.]