

20.07.2022
S/L No.40
KS

C.R.R. 1697 of 2021

Mrs. Anima Roy
-Vs.-
The State of West Bengal & Ors.

Mr. Ujjal Ray
.....For the Petitioner
Mr. Arijit Ganguly
Ms. Debjani Sahu
.....For the State
Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. P. Kar
.....For the O.P. Nos.2 & 3

Party/parties is/are represented in the order by their name/names
as printed above in the cause title.

The revisional application filed by the petitioner is taken up for
hearing.

Petitioner has filed this application under Section 482 of the Code
of Criminal Procedure praying for setting aside of order dated
23.03.2021 passed by Learned Additional Chief Judicial Magistrate,
Sealdah, South 24 Parganas in G.R. Case No.2129 of 2019, whereby a
prayer made by the petitioner for cancellation of bail granted to
opposite party nos.2 and 3 on 18.11.2019 in connection with Maniktala
Police Station Case No.266 of 2019 dated 15.08.2019 under Sections 341/
323/ 354/ 114 of the Indian Penal Code was rejected.

It is submitted by learned advocate for the petitioner that in connection with the aforesaid case opposite party nos.2 and 3 filed an application under Section 438 of the Code of Criminal Procedure praying for anticipatory bail. Learned Sessions Judge, South 24 Parganas, Alipore in Misc. Case No.6799 of 2019 passed an order dated 14.11.2019 allowing the prayer for anticipatory bail of opposite party nos.2 and 3. Thereafter they obtained bail before the Court of Learned A.C.J.M., Sealdah on 18.11.2019 and the conditions under Section 438(2) of the Code of Criminal Procedure were imposed upon the opposite party nos.2 and 3. It is contended that opposite party nos.2 and 3 during pendency of the case are constantly threatening and intimidating the petitioner and pressurizing her to withdraw the case in connection with Maniktala Police Station Case No.266 of 2019. For such post bail conduct on the part of the opposite party members, the petitioner applied before Learned A.C.J.M., Sealdah praying for cancellation of bail but the same was rejected as misconceived.

It is the case of the petitioner that Learned Magistrate without considering the grounds and the fact that the accused opposite party nos.2 and 3 were not complying with the conditions under Section 438(2) of the Code of Criminal Procedure rejected the application as misconceived with an observation that the case has ended in a charge-sheet.

Learned advocate for the petitioner argued that as de facto complainant he has the right to file an application under Section 439(2)

of the Code of Criminal Procedure for cancellation of the bail independent of the State. It is also urged that the post bail conduct of the opposite party members is not good and contrary to the bond conditions imposed upon them on such grounds the impugned order dated 23.03.2021 is liable to be set aside and the bail granted to opposite party nos.2 and 3 be cancelled and they should be taken into custody.

Learned advocates for the State opposed the revisional application and the prayer made therein. It is argued by the Learned State advocate the bail granted by Learned Sessions Judge could not have been cancelled by Learned Magistrate. Therefore, the order passed by Learned A.C.J.M. suffers from no illegality and the revisional application is liable to be dismissed.

Learned advocate for the opposite party nos.2 and 3 opposed the prayer of petitioner and argued that the application is misconceived and the petitioner had approached a wrong forum for cancellation of the bail which was granted by a Superior Court.

Considered the submissions made by learned advocates for the respective parties and also considered the impugned order passed by Learned A.C.J.M., Sealdah and the contents of the application for revision.

In my considered view an anticipatory bail granted to a person by a Sessions Court may be cancelled by the same Court granting the bail and not by the court of a Judicial Magistrate. It also appears that the case initiated out of Maniktala Police Station Case No.266 of 2019

ended in a charge-sheet on the basis of which Learned Magistrate took cognizance of the offence on 18.01.2021. Admittedly, bail was granted by Learned Sessions Judge, Alipore by order dated 14.11.2019. After a span of nearly two years, the petitioner filed this application for cancellation of bail before the court of Learned A.C.J.M., Sealdah which is not tenable. The petitioner should have approached the appropriate forum which is the Court of Learned Sessions Judge, Alipore which had granted the anticipatory bail and not before the Court of the learned Magistrate which released the accused persons on accepting of the bail bonds.

A court granting bail may direct a person to be arrested and commit him to custody under Section 437(5) of Cr.P.C. but only the High Court or Court of Session are vested with the power under Section 439(2) of Cr.P.C. to direct arrest of any person who has been released on bail and commit him to custody.

In my considered view, the revisional application is misconceived and not in consonance with the procedural law. I do not find any impropriety or infirmity in the impugned order and the same calls for no interference.

Accordingly, the revisional application stands dismissed on contest.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to Learned A.C.J.M., Sealdah for information.

(Ananda Kumar Mukherjee, J.)