

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 7296 of 2021

Sunanda Das

Vs

State of West Bengal & Others

With

CRM 8660 of 2021

State of West Bengal

Vs

Sabul Sk & Others

For the Petitioner

: Mr. Sekhar Kumar Basu, Sr. Adv.

Mr. Antarikhya Basu

Mr. Sayan Mukherjee

Ms. Madhumita Basak

.....In C.R.M. no. 7296 of 2021

For Opposite party no. 1:

Mr. Rudradipta Nandy

.....In C.R.M. no. 7296 of 2021

For the opposite party no. 2 and 3: Mr. Imtiaz Ahmed

Mr. Diptendu Narayan Bandopadhyay

Ms. Ghazala Firdaus

.....In C.R.M. no. 7296 of 2021

For the opposite party no. 4:	Mr. Ali Hasan Alamgir Ms. Riya Das Ms. Rabia KhatunIn C.R.M. no. 7296 of 2021
For the opposite party no. 5	:Mr. Uday Sankar Chattopadhyay Mr. Anindya Sundar Das Mr. Santanu Maji Mr. Suvaury Das Mr. PronayBasak Ms. Trisha RakshitIn C.R.M. no. 7296 of 2021
For the Petitioner:	Mr. Neguive Ahmed Ms. Amita GaurIn C.R.M. no. 8660 of 2021
For opposite party no. 1 & 2 :	Mr. Imtiaz Ahmed Mr. D Banerjee Ms. Ghazala FirdausIn C.R.M. no. 8660 of 2021
For opposite party no. 3 :	Mr. Ali hasan Alamgir Ms. Riya Das Ms. Rabia KhatunIn C.R.M. no. 8660 of 2021
For opposite party no. 4 :	Mr Uday Sankar Chattapadhay Mr. Aninda Sundar Das Mr. Santanu Majhi Mr. Suvaury Das Mr. Pranay Basak Ms. Trisha RakshilIn C.R.M. no. 8660 of 2021
Heard on	: March10, 2022
Judgment on	: April 01, 2022

Bibhas Ranjan De, J.:-

1. The genesis of the case began with First Information Report (for short 'FIR') which was lodged by one Sunanda Das (Petitioner of CRM 7296 of

2021) with Mongalkote Police Station on 12.07.2021 alleging murder of his father (Asim Das) leading to Registration of the case as Mongalkote Police Station Case no. 143 of 2021 dated 12.07.2021 under Sections 302 of the Indian Penal Code, (for short I.P.C) 1860 read with Section 25/27 of the Arms Act 1959 corresponding to G.R case no. 618/2021.

2. It is alleged that C.I.D West Bengal, took up investigation of the case and during investigation prima facie it has been revealed that opposite parties, four (4) accused, cooked up a conspiracy to kill the deceased father of the complainant and got it done by one Obaidur Rahaman @ Suraj, hired killer, who fired the fatal gun-shot at Asim Das on 12.07.2021. Accordingly, C.I.D West Bengal arrested said opposite parties and submitted charge sheet being no. 190 of 2021 dated 07.10.2021 under Section 302/120B/473/34 of the IPC against nine (9) accused persons including four opposite parties, after completion of investigation.

3. Ld. Vacation Judge, Purba Bardhaman, granted bail to all four opposite parties on 26.10.2021 vide three criminal Misc. case nos. 2182/2021, 2185/2021 and 2193/2021 after perusal of case diary and after hearing both sides holding inter alia that investigation was completed by submitting charge sheet and accused were in custody for considerable period. Ld. Judge granted bail to all four opposite parties on executing bail bond of Rs. 10,000/- with two sureties of Rs. 5000/- each and also on

condition to report to the C.I.D once in a week keeping an eye to the apprehension of any threat to the witness.

4. Being aggrieved by and dissatisfied with the said orders dated 26.10.2021 passed by Ld. Vacation Judge, defacto complainant has filed an application under Section 439(2) of the Code of Criminal Procedure (for short 'Cr.P.C') being CRM no. 7296 of 2021 against all four (4) accused (private opposite parties) granted bail by the order dated 26.10.2021 passed by the Ld. Vacation Judge, Purba Bardhaman, and the state has also filed a petition under Section 439 (2) of Cr.P.C against same four (4) accused (private opposite parties) for cancellation of bail being C.R.M no. 8660 of 2021.

5. On behalf of the petitioner in C.R.M no. 7296 of 2021, Mr. Sekhar Kumar Basu, Ld. Senior Advocate, referred to the decisions reported in the cases as mentioned below:

5.1 Anil Kumar Yadav Vs. State (NCT of Delhi) and another (2018) 12 SCC 129

5.2 Subodh Kumar Yadav Vs. State of Bihar and another (2009) 14 SCC 638

5.3 Puran Vs. Rambilas and another with Sekhar and another Vs. State of Maharashtra and another (2001) 6 SCC 338

5.4 Ram Govind Upadhyay vs. Sudarshan Singh and others (2002)**Calcutta Criminal Law Reporter (SC) 533**

6. Mr. Basu contended that the Ld. Vacation Judge granted bail to the opposite parties on the ground of period of detention and submission of charge sheet ignoring the 'severity of the offence', statement recorded under Section 164 of Cr.P.C, identification of the accused in the Test Identification Parade, and the call records of mobile phones showing conversation among the opposite parties at the time of commission of offence. Therefore, according to Mr. Basu, the order of bail granted in favour of the opposite parties should be cancelled by setting aside the order dated 26.10.2021.

7. In C.R.M no. 8660 of 2021 Ld. Additional Public Prosecutor on behalf of the State/ Petitioner supporting the argument advanced by Mr. Basu contended inter alia that Ld. Vacation Judge did not adhere to the statement of witnesses recorded under Section 164 Cr.P.C as well as identification of the accused in Test Identification Parade and came to an erroneous finding by granting bail to the accused.

8. Ld. Advocates Mr. Imtiaz Ahmed, Mr. Ali Hasan Alamgir and Mr. Uday Sankar Chattopadhyay on behalf of the opposite parties, have drawn our attention to the fact that separate bail order granted by three separate Misc. case have been challenged in both the C.R.M nos. 7296 of 2021 and

8660 of 2021 by a single application under Section 439 (2) of Cr.P.C which is not maintainable. Next, it is contended that Ld. Vacation Judge considered all relevant materials in the case diary and period of detention and also submission of charge sheet after investigation. That is why, it is contended that nothing else to be investigated to justify further detention of the opposite parties.

9. In **Anil Kumar Yadav** (supra) it was observed by the Hon'ble Apex Court:

" 17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21, this Court has held as under: (SCC p. 31, para 18)

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see [Prahlad Singh Bhati v. State \(NCT of Delhi\)](#) (2001) 4 SCC 280 and [Gurcharan Singh v. State \(NCT of Delhi\)](#) (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert

justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528:** (SCC pp. 535-36, para 11)

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598** and **Puran v. Rambilas (2001) 6 SCC**

338.)"

19. The test to be applied for grant of bail was also considered in **Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13**, wherein it was held as under: (SCC pp.21-22, para 16)

"16.The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Jagjit Singh* ([1962] 3 SCR 622 and *Gurcharan Singh v. State (NCT of Delhi)* (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

10. In **Subodh Kumar Yadav** (supra) Hon'ble Apex Court opined as follows:

"In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made. (See Gajanand Agarwal v. State of Orissa [2006 (9) SCALE 378] and Rizwan Akbar Hussain Syied v. Mehmood Hussain [2007 (10) SCC 368] at (SCC p.37, para7). Further, while cancelling bail, the superior Court would be justified in considering the question whether irrelevant material were taken into consideration by the court granting bail"

11. In **Puran** (supra) it was decided by the Hon'ble Apex Court as follows:

"He submitted that in view of these observations the learned Additional Sessions Judge did not give reasons whilst granting bail. He submitted that in these circumstances the Additional Sessions Judge cannot be faulted. He submitted that the High Court could not cancel bail on this ground. We see no substance in this contention. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done, in the Order dated 11- 9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.

Mr. Lalit next submitted that the High Court has itself not given reasons but has mechanically set aside the order of the bail. We see no substance in this submission. The High Court has correctly not gone into merits or demerits of the matter. The High Court has noted that evidence prima-facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that evidence prima facie indicated that a demand for Rs. 1 lakh was made just a month prior to the incident in question. The High Court has stated that the material on record suggested that the offences

under Sections 498-A and 304-A (sic 304-B) were prima facie disclosed. The High Court has concluded that the material on record, the nature of injuries, demand for Rs. 1 lakh and the other circumstances were such that this was not a fit case for granting bail. Thus the High Court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous order granting bail should be cancelled.

Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram vs. State of Haryana reported in **1995 (1) S.C.C. 349**. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.”

12. In **Ram Govind Upadhyay** it was held by the Apex Court as follows:

“In our view, the High Court has committed a manifest error in the matter of grant of bail when public tranquility has been stated to be disturbed on the electionday and when there is an obstruction for the exercise of a right guaranteed under the Constitution and when there is an existence of crime against the society at large. Irrespective of different factors to be taken note of in regard to the cancellation of the grant of bail, in our view

interest of justice seem to be over-whelmingly in favour of the appellant herein in the matter of cancellation of the bail. The elder brother has been brutally murdered and the proceeding is pending before the Sessions Judge. It is during the period when the accused persons were enlarged on bail that another FIR was recorded and charge-sheet having been filed, the Court ought to have taken a serious note of these factual details. Tampering with the evidence and threatening of the witnesses are two basic grounds for cancellation of bail - both these two factors stand alleged and by reason of subsequent filing of charge-sheet therein, there should have been some mention of it in the order for grant of bail. The factum of the second charge-sheet has been omitted in its entirety."

13. At the very outset we may turn to the submission advanced on behalf of the accuseds to the effect that both the C.R.M are not maintainable because of challenging three separate orders by a single application. It has come to our notice that accused namely Sk. Babul @ khokon filed one bail application, Sabul Sk. And Samu Sk. filed another joint petition with a prayer for bail and accused Najrul Sk. filed a separate bail application for consideration before the Ld. Vacation Judge. On 26.10.2021 Ld. Vacation Judge disposed of all three bail applications by three separate orders. Being aggrieved defacto complainant 'Sunanda Das' filed one application for cancellation of bail (C.R.M no. 7296) and State also file one application for cancellation of bail against the same petitioners (C.R.M 8660 of 2021). In these circumstances, we are of the view, that the single cancellation petition against those three orders filed on the same day is not likely to prejudice any of the accused in any manner. No authority has been cited on behalf of the accused to say that a petition under Section 439(2) cannot be directed against several orders granting bail to accuseds involved in the same police case. Therefore, the cancellation petition cannot be said to be not maintainable.

14. The question thus before us is as to whether there are prima facie grounds available for cancellation of bail under Section 439(2) of the Cr.P.C or not.

15. The bail granted under Section 439(1) of the Cr.P.C can be cancelled where the accused:

15.1. misuse his liberty by indulging in similar criminal activity;

15.2. interferes with the course of investigation;

15.3. attempts to tamper with evidence of witness;

15.4. threatens witness or indulges in similar activities which would hamper smooth investigation;

15.5. is likely to flee to another country;

15.6. attempts to make himself scarce by going underground or becoming unavailable to the investigating agency;

15.7. attempts to place himself beyond the reach of his surety etc.

These are all post bail misconduct.

16. *Anil Kumar Yadav* (supra) discussed elaborately the grounds to be considered at the time of granting bail under Section 439(2) Cr.P.C. On the other hand ***Subodh Kumar Yadav*** (supra) emphasised on the grounds required for cancelling bail. It was observed that the superior Court, while cancelling bail, would be justified in considering the question whether irrelevant materials were taken into consideration by the court granting bail. In that case judicial discretion was exercised by the Ld. Judicial Magistrate

in an arbitrary manner. **Puran** (supra) dealt with the reasons to be assigned at the time of granting bail. It was further observed that cancellation of bail may be ordered where bail order is passed in a heinous crime ignoring the material and evidence on record and without giving any reasons. Such order can be set aside for interest of justice. **Ram Govind Upadhyay** (supra) dealt with one heinous crime like murder and cancellation of bail was ordered to be justified on the ground of tampering with the evidence and threatening of the witnesses.

17. To eschew the prolixity we refrain ourselves from reproducing the entire impugned order dated 26.10.2021 passed by the Ld. Vacation Judge, Purba Bardhaman. But on perusal of the impugned orders we find that Ld. Judge only focused on the submission of charge sheet and period of detention. Keeping an eye to the submission on behalf of the state Ld. Judge also passed order directing the accuseds to report to the CID once in a week apprehending threat to the witnesses.

18. In this conjecture, we think it appropriate to refer the case of **Sushila Aggarwal and others vs. state (NCT of Delhi) and another (2020) 5 SCC 1(Constitution Bench)** wherein Hon'ble Apex Court observed as follows:

“ 85.8 It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The Court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

*85.9 The correctness of an order granting bail, can be considered by the appellate or Superior Court at the behest of the State or investigating agency, and set aside on the ground that the Court granting it did not consider material facts or crucial circumstances. (See **Prakash kadam v. Ramprasad Vishwanath Gupta, Jai Prakash Singh and State of U.P v. Amarmani Tripathi**). This does not amount to “Cancellation” in terms of Section 439 (2) Cr.P.C.”*

19. Therefore, in **Sushila Aggarwal** (supra) Hon’ble Apex Court handed down a broader ruling on applicability of section 439(2) of Cr.P.C by expressing the view that the correctness of an order granting bail can be considered and set aside, if required, by the Appellate Court or Superior Court and that order cannot be said to be an order of ‘cancellation’ in terms of section 439 (2) of Cr.P.C. Therefore, the Power of Cancellation of bail can be invoked in the following two situations:

19.1. on merit of a case mainly on the ground of the order granting bail being perverse, passed without due appreciation of merit or in violation of any substantive or procedural law.

19.2. on the ground of misuse of liberty after the grant of bail or other supervening circumstances.

20. The impugned orders dated 26.10.2021 clearly visualize that though Ld. Vacation Judge heard the submission made on behalf of the State regarding incriminating materials in the Case Diary but Ld. Judge did not deal with any of such incriminating materials in his order. Ld Judge, rather, focused on the fact of submission of charge sheet and the period of detention only.

21. We have gone through the case diary and prima facie it appears that the offence is very serious one and relating to an incident of murder and that too by one hired killer following a conspiracy. It appears that the deceased was the Anchal Sabhapati and opposite party no. 2, Sabul Sk, is Anchal Saha Sabhapati and it is alleged to have a dispute between Anchal Sabhatpati and Anchal Saha Sabhapati.

22. Case diary reflects series of statements of witness under Section 161 Cr.P.C and also statements under Section 164 Cr.P.C implicating all the accused/ opposite parties in the murder. The witnesses also identified all the opposite parties during Test Identification Parade. From the charge sheet we find that during investigation IO collected 'connectivity map' of mobile phone calls of all accused/opposite parties and also accused Obidur Rahaman who is alleged to be a hired killer. That connectivity map of mobile phone show the communication for the day of 12th July, 2021 in between 5.30 p.m. and 7.30 p.m. when incident leading to the murder is alleged to have been taken place.

23. Bail in the first type (para 19.1) of cases can be cancelled by Superior Courts only, whereas in the second category (para 19.2) of cases bail can be cancelled by the Court which has granted the bail also.

24. Now, we propose to come to the parameters of law to be considered before granting bail in a case of non-bailable offence. While granting bail Court should keep in mind the following:

24.1. nature of accusations;

24.2. severity of punishment, if accusation entails a conviction;

24.3. nature of evidence in support of the accusations;

24.4. reasonable apprehension of witness being tampered with;

24.5. apprehension of there being a threat for complainant.

25. It is true that no discussion of entire evidence to form an opinion whether evidence would established guilt beyond reasonable doubt is expected at the stage of considering matter of bail. However, prima facie satisfaction of Court in support of charge must be there. As it is trite law that power of granting bail cannot be exercised in capricious or injudicious manner. Heinous nature of crime warrants more caution.

26. In our case, taking the risk of repetition, centre of attention of Ld. Vacation Judge was only on the fact of submission of charge sheet and period of detention at the time of granting bail to the accused/opposite parties in a case of criminal conspiracy for killing persons, ignoring the parameters of law we discussed in para 24.

27. After rummaging through the case diary we found that witnesses recorded statement both under Section 161 and 164 Cr.P.C implicating all accused/opposite parties who were also identified by the witnesses during the Test Identification Parade. Not only that, investigating Officer, during investigation also collected 'connectivity map' of mobile phones of the accused/opposite parties and therefore, it was found that at the time of commission of offence of murder accused/opposite parties talked to each other and even with alleged hired killer. That apart, Sabul Sk. one of the

accused/opposite parties is “ Anchal Saha Sabhapati” being an influential person of the locality.

28. Therefore, position, influence and resources of the accused/opposite parties are also relevant factors to adjudge whether the accused/opposite parties are likely to interfere with administration of justice, trial or tamper with witnesses or evidence.

29. We are not oblivious of the fact that the liberty is priceless treasure for a human being. We are also not oblivious of the fact that the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order.

30. Ld. Vacation Judge, with due respect, seems to have ignored the overwhelming prima facie evidence appearing in the case diary as we discussed in para 27 and 28, rather took into consideration irrelevant materials i.e submission of charge sheet and period of detention.

31. In aforesaid view of the matter, we find it necessary to interfere with the orders passed on 26.10.2021 by the Ld. Vacation Judge, Purba Bardhaman. Such vulnerable order granting bail needs to be set aside in the interest of justice.

32. In the result, both the applications for cancellation of bail under Section 439(2) of the Cr.P.C stand allowed. Thereby, CRM no. 7296 of 2021 and 8660 of 2021 stand disposed of with a direction upon the opposite

parties to surrender before the Jurisdictional Court within seven days from the order failing which jurisdictional Court will take appropriate steps for their arrest.

33. Case dairy be returned.

[BIBHAS RANJAN DE, J.]

34. I Agree.

[DEBANGSU BASAK, J.]