

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Jay Sengupta

CRR 3126 of 2018

With

CRAN 1 of 2020

CRAN 2 of 2022

Satrajit Roy

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Arindam Jana
Mr. Soumajit Chatterjee
Mr. Arhan Sengupta
..... Advocates

For the opposite party no. 2 : Mr. Dhirespratay Singh
Mr. Tanmay Basu
Mr. Manoj Adak
..... Advocates

For the State : Mr. Imran Ali
Ms. Debjani Sahu
..... Advocates

Heard on : 06.07.2022

Judgment on : 19.07.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 04.10.2018 passed by the Learned Additional Sessions Judge, 3rd Fast Track Court, Barrackpore, North 24 Parganas in ST Case No. 3(4) 18 arising out of Titagarh Police Station Case No. 538/2012 dated 15.09.2012.

2. On 15.09.2012 an FIR was lodged under Section 302 of the Penal Code in relation to the death of the sister of the opposite party no. 2. However, a charge sheet, dated 06.12.2012, was filed by the Investigating Agency under Section 306 of the Penal Code. The petitioner was arrested on 15.09.2012. After about 95 days of custody, he was granted bail on 21.12.2012. The petitioner filed an application for discharge under Section 227 of the Code. On 16.02.2018 the learned Trial Court was pleased to turn down such prayer. On 25.06.2018, the brother of the victim filed an application for alteration of charge under Section 216 of the Code. By an order dated 21.08.2018, the learned Trial Court was pleased to allow the prayer of the opposite party no. 2 for alteration of the charge against the petitioner from Section 306 of the Penal Code to Sections 302 and 376 of the Penal Code. The accused petitioner challenged the said order by filing the criminal revision being CRR No. 2533 of 2018. Although the matter was fixed for hearing, no stay was granted. On 04.10.2018 the petitioner prayed for adjournment, first on the ground of illness and secondly on the point of pendency of the revisional application before the High Court. But, the learned Trial Court refused to entertain the prayer and cancelled the bail of the petitioner. The said order, dated 04.10.2018, is under challenge in this

revision. By an order dated 12.06.2019 this Court dismissed the earlier revisional application being CRR No. 2533 of 2018.

3. Learned Counsel, appearing on behalf of the accused petitioner, submitted as follows. It was never the case of the prosecution that the petitioner, after being granted bail in 2012, ever flouted any condition. Nor was it the case of the prosecution that there existed any adverse report against him regarding misuse of liberty or other conduct that could warrant cancellation of bail. Secondly, although it is true that charges were altered from Section 306 to Sections 302 and 376 of the Penal Code, if the bail granted to the petitioner had to be cancelled, a proper opportunity of hearing should have been granted. Although no stay was granted in the earlier revision challenging the alteration charges, nevertheless the same was still pending before this Court and propriety required that the learned Trial Court waited for some time and granted an adjournment on the date of the impugned order. It was also evident that on several dates the petitioner was present before the learned Trial Court and that only on 04.10.2018, he sought an adjournment. It had been reiterated by the Hon'ble Supreme Court that before passing an order of cancellation of bail, a Court must grant an opportunity of hearing to the accused. Refusal of hearing a person before cancellation of bail amounts to violation of natural justice. On this, reliance was placed on the decisions of the Hon'ble Apex Court in the cases of P.K. Shaji @ Thammanam Shaji vs. State of Kerala, 2006 (2) SCC (Cri) 174 and Gurdev Singh and Another vs. State of Bihar, 2006 (2) SCC (Cri) 177. Therefore, the impugned order ought to be set aside and the petitioner should be allowed to remain on the same bail. In any event, the petitioner

would attend the learned Trial Court regularly and in such event, the trial may be expedited.

4. Learned counsel, appearing on behalf of the State, submitted as follows. The present case involved very serious offences. In fact, this Court already affirmed the alteration of charges to Sections 302 and 376 of the Penal Code. In the interest of justice, this Court would be pleased to pass a direction upon the learned Trial Court to conduct the trial of the case on a day to day basis.

5. Learned counsel, appearing on behalf of the opposite party no. 2, submitted as follows. The learned Trial Court granted bail to the petitioner in 2002 in the case which was then being proceeded under Section 306 of the Penal Code. In spite of there being 24 injuries on the dead body of the victim, charge sheet was submitted only under Section 306 of the Penal Code. At the time of grant of bail, the learned Public Prosecutor granted no objection. The petitioner had been successful in avoiding the due process of law. In the present stint, the accused had prayed for adjournment at least on three days on the ground of pendency of the earlier revision before this Court. Reliance was placed on the decision of the Hon'ble Apex Court in Deepak Yadav (supra) on the ground that if a bail was granted on bad grounds, the same could be cancelled. Reliance was also placed on the decision of the Hon'ble Apex Court in the cases of Subodh Kumar Yadav vs. State of Bihar & Anr., (2009) 14 SCC 638 and Kamla Devi (supra). On the ground that after securing stay order in this revision, the petitioner avoided to attend the Court, the present revision deserved to be rejected. The petitioner had left no stone unturned to delay the trial. The petitioner

suppressed material facts and distorted the same. Section 439 (2) of the Code gave ample power to the Court granting bail or to a superior Court to cancel a bail even suo motu. Lastly, for the ends of justice, the trial was also required to be expedited.

6. I heard the learned counsels appearing on behalf of the parties and perused the revision petition, the case diary and the written notes filed.

7. This is an unfortunate case where despite there being sufficient prima facie materials to attract charges of murder and rape, after investigation a charge sheet was submitted only under Section 306 of the Penal Code. The learned Trial Court too added to the confusion by accepting the same. Thereafter, at the intervention of the victim's brother, the shroud was removed and the learned Trial Court found merit in the proposition that the charges should be altered to Sections 302 and 376 of the Penal Code. However, this is only the context, but not the issue we are faced with in this revision.

8. The accused petitioner had filed a revision being CRR No. 2533 of 2018 before this Court challenging the refusal to discharge him from the case. Although no stay was granted, the matter remained pending. Quite naturally, the petitioner prayed for time before the learned Trial Court. After a few occasions since there was no stay granted by this Court, the learned Trial Court turned down the petitioner's prayer for an adjournment and cancelled the bail granted to the petitioner.

9. Admittedly, there was no allegation that the petitioner's post bail conduct was bad or that the same warranted cancellation of bail.

10. Therefore, the case at hand boils down to whether the learned Trial Court erred in cancelling the bail of the petitioner without giving a proper hearing to the accused although a prayer was made for an adjournment not only on the ground of illness of the accused, but also on the ground of pendency of a revisional application before the High Court and a further prayer was made to file a written objection.

11. Ordinarily, before a bail is cancelled, an accused should be heard. On this, reliance is placed on P.K. Shaji @ Thammanam Shaji (supra).

12. It is true that mere pendency of a revisional application before a superior Court without there being a stay granted in the same is no bar on the trial Court to proceed with the matter. However, it all depends on facts and circumstances of each case so as to see whether propriety would require that the learned trial Court grants an adjournment on the ground of such pendency.

13. In the present facts, when a revisional application was pending before the High Court, the learned Trial Court erred in cancelling the petitioner's bail without providing him a proper opportunity of hearing and without even permitting him to file a written objection.

14. In view of the above, the impugned order, so far as it relates to cancellation of the petitioner's bail, is set aside. However, the application for cancellation of bail shall be heard afresh upon giving an opportunity to the accused petitioner to be heard. The said exercise regarding hearing of the application for cancellation of bail of the petitioner shall be concluded at the earliest, preferably within three months from the date of communication of this order. If the accused petitioner still fails to appear before the learned

Trial Court, it shall be open to the learned Trial Court to take necessary coercive actions like issuing warrant of arrest. After disposal of such application, the learned Trial Court shall proceed with the matter and conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties by fixing dates in terms of Section 309 of the Code of Criminal Procedure.

15. With these observations, the revisional application is disposed of.

16. The connected applications, accordingly, stand disposed of.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

P. Adak