

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMA Nos.83, 84, 85 of 2020 & 107, 108, 109 & 110 of 2018

CRLMA Nos.83, 84 & 85 of 2020

State of Odisha

.... Petitioner
Mr.S.K. Nayak, AGA

-Versus-

Raj Kumar Jain
Priti Jain
Nupur Jain

.... Opposite Parties
P.C. Jena, Advocate

CRLMA Nos.107, 108, 109 & 110 of 2018

Narendra Kumar Jain

Mr.P.C. Jena, Advocate

-Versus-

State of Odisha and another

Opposite Parties
Mr.S.K. Nayak, AGA

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF HEARING :10.12.2021 DATE OF ORDER : 04.01.2022

1. Aforesaid applications are disposed of by the following order in view of the fact that the same arise out of a common cause of action for cancellation of bail granted to the accused persons by the orders of this Court.

CRLMA Nos.83, 84 & 85 of 2020:

2. The present applications have been filed by the State in terms of Section 439(2) of the Criminal Procedure Code, 1973 (herein after referred to as 'the Code') for cancellation of bail granted to the respective opposite parties by orders of this Court in

ABLAPL Nos.16569, 16583 and 16561 of 2017 disposed of on 23.10.2017 arising out of Badagada P.S. No.92 of 2017 corresponding to C.T. Case No.1671 of 2017 registered under Section(s) 420 and 120-B IPC pending in the file of learned S.D.J.M., Bhubaneswar on the grounds, inter alia, that all of them have violated the conditions of the bail orders, inasmuch as, did not cooperate the IO during investigation and for having left the jurisdiction of Bhubaneswar without requisite permission being obtained.

3. Learned Additional Government Advocate appearing for the State contended that the accused persons misutilised the liberty granted by orders of this Court and are guilty of violating the above said conditions and therefore, it is a fit case where bail should be cancelled. While contending so, it is brought to the notice of the Court that the accused persons even left the limits of Bhubaneswar without informing the IO or obtaining permission of the court and that apart, are not cooperating in the investigation, which has substantially suffered. The case diary is produced before the Court in order to satisfy the above contentions and conduct of the accused persons for having violated the conditions imposed while being released on bail.

4. According to the State, in view of the decision of the Supreme Court in the case of *Gurbaksh Singh*, certain guidelines have been laid down for granting anticipatory bail with the following words, such as, generalization on matters which rest on discretion and the attempt to discover formula of universal application, when facts are bound to differ from case to case, frustrate the very purpose of conferring discretion. Another decision of the Supreme Court in the case of *Niru Yadav Vrs. State of UP* reported in AIR 2015 SC 3703 is placed in reliance in order to

highlight upon the manner in which a High Court is to exercise its discretion, while considering an application for bail. Of course, the above is the pleading from the side of the State which is in relation to the jurisdiction of High Court in granting bail and the circumstances under which it should be allowed but the challenge at present is on the premise that the accused persons disobeyed/violated the conditions of bail orders and therefore, it deserve to be cancelled.

5. The learned counsel appearing for the opposite parties/accused persons would contend that the conditions of the bail bonds were made known to them much later and against such a backdrop, it is alleged that the conditions have been violated. It is claimed that though the bonds were executed but by the time the accused persons put their signatures on the same, the conditions had not been filled up and under such circumstances, it is being claimed that the conditions have not been honoured. As per the contention of the learned counsel for the opposite parties/accused persons such a situation would not have arisen, if the paraphernalia, while procuring the bonds had been duly followed and observed.

6. It is further contended from the side of the opposite parties/accused persons that there has been no violation with regard to the condition, such as, to cooperate in the investigation till the charge sheet is filed for the fact that the IO did approach them at the places of their stay and even collected certain evidence. In fact, an objection is filed by the opposite parties/accused persons by stating that after bail was granted and pursuant to a notice received under Section 41-A Cr.P.C., due intimation was given to the IO intimating him about the unavoidable circumstances for failing to respond with a request to send a questionnaire so that a write up may be submitted and in that respect a copy of representation

supported by an affidavit and postal receipt have been filed and enclosed under Annexure-A/3 series. It is further contended that despite such a correspondence, the IO never made any kind of communication to the opposite parties and instead, the present applications were filed for cancellation of bail. In support of the contention that the bail bonds were not filled up at the time when signatures were obtained thereon, it is being contended by the opposite parties/accused persons that it was confronted to the IO and objected on the ground that the bail bonds in Form 45 would not be filled up leaving the blank spaces but was replied by claiming that the conditions and seizures would be reflected therein at a later stage and communicated very soon and under a bonafide belief, the bail bonds were signed.

CRLMA Nos.107, 108, 109 & 110 of 2018:

7. In so far as the instant applications which have been filed by the petitioners are concerned, it is also for cancellation of bail granted to respective opposite parties arising out of Badagada P.S. No.92 of 2017 on the ground that after the bail orders of this Court, the accused persons left Bhubaneswar and not only avoided the investigation but also absconded from their residential houses. According to the petitioners, the local police informed them that the accused persons are not able to be interrogated as they have not been made available for the purpose of investigation. With the above contention, it is being claimed that since the opposite parties, who owe the money to them, are avoiding and obstructing smooth investigation and are not available in the addresses of Bhubaneswar and Indore and as there is every possibility of destroying evidence in their hands and also disposal of the properties by them, the bail granted by this Court, should be cancelled by invoking Section 439 (2) Cr.P.C.

8. In response to the above, the contention of the opposite parties is the same to the effect that there has been no violation of any of the conditions of bail orders or any of them avoiding investigation.

9. For the Court's perusal, the case diary in respect of Badagada P.S. Case No.92 of 2017 was produced. In fact, the Court had asked the learned AGA that if the conditions were violated what were the steps taken by the IO to intimate the accused persons. It is apprised that notice was issued under Section 91 Cr.P.C. on number of occasions but then, there was no proper response received from the opposite parties. On perusal of the case diary, it is only made to suggest that notices were sent to provide information regarding bank accounts and landed properties at Bhubaneswar for the purpose of further investigation, failing which, cancellation of bail would be moved. However, the Court does not find any specific mention regarding notices being sent to the opposite parties intimating each of them to have violated the conditions for leaving Bhubaneswar without permission and for having not extended cooperation in the investigation. Rather, in course of hearing, the learned counsel for the opposite parties informed the Court that the IO had been to the places of present stay for the purpose of investigation, during which, all kinds of assistance was rendered from their side. If any condition is really violated, according to the considered view of the Court, it should be made clearly known to the accused before proceeding against him for cancellation of bail. In the case at hand, the case diary does not indicate as to if any of the opposite parties were ever informed about the conditions being violated and for not cooperating in the investigation. This Court had directed the IO to file an affidavit, in response to which, it was submitted indicating therein that the

presence of opposite parties to be badly needed for the purpose of investigation but they were not properly responding for which it is still pending. In any case, considering the contentions of the respective parties and by referring to the case diary, the Court reaches at a conclusion that the materials have not really been put in place for a case of cancellation of bail vis-à-vis the opposite parties.

10. Bail is a significant aspect of criminal action and the settled doctrine laid down by the Supreme Court is that bail should be a rule and rejection, an exception. The provision as to cancellation of bail can sabotage the above rule and rob the accused of his liberty, if the plea can establish cogent reasons for cancellation of bail. In *Daulat Ram and others Vrs. State of Haryana* reported in 1995 (1) SCC 349, the Supreme Court held that very cogent and overwhelming circumstances are necessary for cancellation of bail and bail once granted should not be cancelled in a mechanical manner. In fact, the Supreme Court enunciated the law by laying down certain illustrations which are not exhaustive in nature by stating that intervention or attempt to interfere with the due process of law; evasion or attempt to evade the court proceeding; misuse of the liberty granted to the accused by not following the terms agreed, while out on bail; possibility of acute absconding or fleeing from justice; likelihood of actual misuse of bail are some of the grounds, whereupon, bail may be cancelled. In *Ramcharan Vrs. State of MP* reported in (2004) 13 SCC 617, the Supreme Court observed that only upon existence of overwhelming circumstances, it can invite cancellation of bail and not otherwise and definitely not on re-appreciation of the materials on record which would amount to review or alteration of decision of the Court.

11. In the present case, it is made to appear that there is some kind of inconvenience or difficulty being faced by the IO to further the investigation and to accomplish it but there is no convincing and overwhelming evidence on record to suggest that the opposite parties did really be guilty of violating any of the conditions of the bail orders. The settled law is that the standards for grant and cancellation of bail are distinct and different for the fact that the criteria stand on separate footings. Having said that, the Court reaches at a decision that it is not a case where the opposite parties can be said to have mis-conducted themselves in a manner which is adequate or sufficient to cancel their bail. If the IO did have any difficulty on account of the conduct or mischief committed by the opposite parties, it would have been duly reflected in the notices sent to them, which is found to be conspicuously absent considering the case diary which has been produced for the Court's reference. Being conscious of the settled position of law, which has precisely been stated herein above, the Court is not inclined to cancel the bail of the petitioners but is of the humble opinion that necessary directions should be made for the purpose of expediting and closure of investigation.

12. Hence, it is ordered.

13. In the result, applications under Section 439(2) Cr.P.C. filed by the petitioners for cancellation of bail of the opposite parties/accused persons granted by this Court with respect to Badagada P.S. Case No.92 of 2017 corresponding to C.T. Case No.1671 of 2017 stand dismissed. However, in view of the decision of this Court stated herein above, for the purpose of investigation, the following directions are made which are to the effect that:

- (i) the IO shall intimate a specific date, time and if necessary, the location for the purpose of investigation to

the opposite parties in advance by such means as would be convenient and proper;

(ii) the opposite parties on being informed about the purpose and location of investigation shall promptly respond and attend to it without fail and in case of any extra-ordinary situation preventing them from reaching the IO for investigation, it has to be promptly informed by them;

(iii) the details of the purpose of investigation and documents which are to be examined by the IO, if possible, to be briefly stated in the shape of a questionnaire which is to be shared with the opposite parties unless there appears any legal impediment;

(iv) the IO shall fix up the dates at least once in a month and intimate the opposite parties well ahead to ensure completion of investigation as soon as possible;

(v) the opposite parties shall while leaving the jurisdiction of Bhubaneswar comply the condition of bail with the leave/intimation as may be required during the pendency of investigation.

14. If the opposite parties violate any of the above directions of this Court, the State shall be at liberty to initiate a fresh action as per and in accordance with law.

15. The CRLMAs stand disposed of accordingly.

(R.K. Pattanaik)
Judge

Dated 4th January, 2022/KC Bisoi/Secretary