

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 198 of 2020

Bithika Sil

Vs.

Kartick Paik & Ors.

For the Petitioner : Mr. Arindam Sen,
Mr. Saurav Basu,
Ms. Priyanka Mondal,
Mr. Gazi Faruque Hossain.

For the Opposite Party : Mr. Debasis Kar.
nos. 1 to 5

For the State : Ms. Rita Datta.

Heard on : 17.07.2023

Judgment on : 08.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 09.12.2019 passed by the Learned Sessions Judge, Barasat, 24 Parganas (North), in connection with Cri. Misc. Case No. 05/2019, rejecting thereby the prayer of the petitioner (i.e. de facto complainant) for cancellation of bail of the opposite parties made under Section 439(2) of the Code of Criminal Procedure, by not interfering with the impugned orders of granting bail to the opposite parties, vide orders dated

30.08.2019 and 04.09.2019 so passed by the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North) under Section 437 of the Code of Criminal Procedure, in connection with New Barrackpore Police Station Case No. 318/2019 dated 24.08.2019 culminating into G.R. Case No. 4820/19 presently pending before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North) for commission of offence under Sections 448/323/326/308/379/427/354B/506/34 of the Indian Penal Code.

- 2.** The petitioner/de facto complainant's case is that on 24.08.2019 at about 1 p.m. the opposite parties/accused persons Nos. 1 to 4 along with one Binoy Paik son of Kedar Paik, Biswa Paik and Asish Paik, both sons of Late Manish Paik and Smt. Dipa Paik wife of Benoy Paik along with about 200 unholy associates suddenly attacked the house of the complainant pursuant to previous animosity and started ransacking the said house. Further, all the miscreants as named started removing valuable articles of the complainant and when the complainant and her family members resisted the said miscreants they conjointly pushed the complainant to the floor and started assaulting her with bamboo sticks and iron rods and even inflicted injury on her head as a result of which the complainant sustained severe head injury with profuse bleeding from the same. And by taking advantage of the helpless condition of the complainant the said miscreants including the opposite parties/accused persons herein violated her privacy. The husband of the complainant, Asim Sil, tried to rescue the complainant but the said opposite parties/accused persons physically assaulted him and as a result he also

sustained injury on his head and cut injury on his cheeks and chin. Further, they attempted to outrage the modesty of the sister-in-law of the complainant and even the father-in-law of the complainant aged about 82 years was also not spared. He also sustained injury on his ears. After that the complainant was taken to New Barrackpore Police Station by her husband Asim Sil wherefrom she was shifted to Ghola Hospital where she was treated by the doctor and **eight stitches were put over the cut injury on her head.**

3. That immediately the facts narrated hereinabove were reduced in writing and the letter of complaint was submitted before the Officer-in-Charge of New Barrackpore Police Station giving rise to New Barrackpore Police Station Case No. 318/2019 dated 24.08.2019 culminating into G.R. Case No. 4820/19 presently pending before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North) against opposite parties/accused persons herein along with one Binoy Paik son of Kedar Paik, Biswa Paik and Asish Paik, both sons of Late Manish Paik and Smt. Dipa Paik wife of Benoy Paik and **other 200 persons for commission of offence** under Sections 448/323/326/308/379/427/354B/506/34 of the Indian Penal Code.
4. That subsequently it came to the knowledge of the petitioner that on 30.08.2019 the opposite party/accused person no. 1 was brought under arrest by the investigating agency before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North) and on the same day he was released on bail by the said Court on the ground that **the Learned Additional Public Prosecutor raised no**

objection in respect of granting bail to the opposite parties/accused person No. 1 and drawing an unreasonable conclusion that the dispute cropped up concerning civil subject matter and there are case and counter case between the parties.

5. On 04.09.2019 the opposite parties/accused person Nos. 2 to 5 surrendered before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North) and once again the Learned Additional Public Prosecutor raised no objection and considering the same reasons and more particularly the fact of enlarging the opposite parties/accused person No. 1 on bail, they were also released on bail on the selfsame day by the said Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North).
6. The petitioner then preferred an application under Section 439(2) of the Code of Criminal Procedure before the Court of the Learned Sessions Judge, Barasat, 24 Parganas (North) praying inter alia for cancellation of bail so granted to the opposite parties/accused persons nos. 1 to 5 on 30.08.2019 and 04.09.2019, giving rise to Cri. Misc. Case No. 05/2019. By an order dated 09.12.2019, the Learned Sessions Judge, Barasat, 24 Parganas (North) turned down the said prayer of the petitioner for cancellation of bail of the opposite parties/accused persons nos. 1 to 5.
7. It is submitted that when the opposite parties/accused persons nos. 1 to 5 were released on bail in connection with the present case, they started threatening the complainant with dire consequences and started pressurizing her not to pursue the present case any further and the

aforesaid fact has already been diarized with the New Barrackpore Police Station giving rise to G.D. Entry No. 2275 dated 17.10.2019.

8. It is stated that unless the bail so granted to the opposite parties/accused persons nos. 1 to 5 by orders dated 30.08.2019 and 04.09.2019 are cancelled by this Hon'ble Court by interfering with the impugned order dated 09.12.2019 passed by the Learned Sessions Judge, Barasat, 24 Parganas (North) in connection with Cri. Misc. Case No. 05/2019 germane from the order dated 30.08.2019 and 04.09.2019 and all the aforesaid orders are set aside, the petitioner would suffer irreparable loss and injury.
9. It is further stated that at the time of filing the revision, the investigation was still not complete.
10. **Ms. Rita Dutta, Learned counsel for the State** has placed the case diary.
11. **On perusal of the materials on record including the case diary, it appears that the petitioner suffered scalp injury and was also given eight stitches. The case was registered on 24.08.2019. The victim was medically examined and treated on 24.08.2019 itself.**
12. **Accused Kartick Paik was produced on 30.08.2019 and granted bail on the same day as the learned APP raised no objection.**
13. **It is unfortunate that considering the nature of offences alleged, the Court relied upon the submission of the APP, without calling for the injury report. It is the duty of the Court to ensure justice and not rely totally on the submission of either party. As to why the injury report was still not in the case diary is best known to the**

prosecution. Even on 04.09.2019, when the learned Sessions Judge considered and rejected the prayer for cancellation of bail, there was no injury report in the case diary as noted by the Sessions Judge, though as of now it's part of the case diary at page 21, as seen by this Court.

14. Charge sheet has now been filed being number 451/2019 on 31.12.2020 for offence punishable under Sections 448/325/506/34 of the Indian Penal Code. Though **at that stage** there has been prima facie abuse of the process of law/Court before the Trial Court as discussed, but considering the present circumstances, this Court is not inclined to grant the relief prayed for at this stage in the interest of justice.
15. The authorities concerned will proceed in accordance with law in respect of any subsequent developments.
16. **CRR 198 of 2020 is accordingly dismissed.**
17. **The trial Court shall proceed with the trial of the case expeditiously.**
18. All connected applications, if any, stands disposed of.
19. Interim order, if any, stands vacated.
20. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)