

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA NO: CRAN/2/2023

IA NO: CRAN/2/2023

CRR/576/2023

Arif Khan & Ors.

VS

State of West Bengal & Anr.

For the petitioner: Mr. Sabyasachi Chatterjee, Adv.,
 Mr. Subhajit Saha, Adv.,
 Mr. Kiron Sk, Adv.

Heard on: May 11, 2023.

Judgment on: May 11, 2023.

BIBEK CHAUDHURI, J. : –

1. An order dated 14th July, 2022 passed in Criminal Misc Case No.1475 of 2021 in connection with Suti Police Station Case No.208 of 2020 dated 27th May, 2020 under Sections 448/325/308/313/34 of the IPC passed by the learned Sessions Judge, Murshidabad in Sessions Trial Case No.05 of 2022 pending before the learned Additional Sessions Judge, 2nd Fast Track Court, Jangipur is under challenge before this Court in the instant revision.

2. By passing the impugned order the learned Sessions Judge, Murshidabad in Criminal Misc Case No.6945 of 2020 cancelled the prayer for bail. The said order is under challenge by the petitioners.

3. This Court in CRR No.1241 of 2023 held that in **Madhu Limaye vs. State of Maharashtra** reported in **AIR 1978 SC 47** a Three-Judges Bench, referring to the earlier expression of Two-Judges Bench in **Amar Nath & Ors. vs. State of Haryana & Ors.** reported in **AIR 1977 SC 2185**, held that against the order of granting or refusing or cancelling bail which are interlocutory in nature, revision is not maintainable. Same decision was reiterated in subsequent decisions by the Hon'ble Supreme Court in **Dr. Narendra K. Amin vs. State of Gujarat & Anr.** reported in **(2008) 13 SCC 584**, **Mohit @ Sonu & Anr. vs. State of Uttar Pradesh & Anr.** reported in **(2013) 7 SCC 789** and **Usmanbhai Dawoodbhai Menon & Ors. Vs. State of Gujarat** reported in **(1988) Crlj 938 (SC)**. Thus, the Hon'ble Supreme Court consistently held that an order of granting, refusing or cancelling bail is an interlocutory order because of the fact that it does not take away the petitioner's right to make the similar prayer subsequently and repeatedly before the Court of law.

4. When the decision of this Court passed in the aforesaid revision was informed to the learned Advocate for the petitioners, the learned Advocate for the petitioners refers to Five-Judges Bench of the Hon'ble Supreme Court in **Sushila Aggarwal & Ors. Vs. State (NCT of Delhi) & Anr.** reported in **(2020) 5 SCC 1**.

5. Sushila Aggarwal is a decision where the following issue were decided:-

“(1) Whether the protection granted to a person under Section 438 Cr.P.C should be limited to a fixed period so as to enable

the person to surrender before the trial court and seek regular bail.

(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.”

6. This decision does not deal with specifically the question as to whether an order of cancellation of order is revisable or not.

7. Mr. Chatterjee, learned Advocate for the petitioner next refers to a Division Bench decision of this Court in the case of **Mahesh Mahato & Ors. vs. Sri. Sankar Kumar Mahato & Anr.** reported in **1999 1 CHN 284**. Paragraph 4 and 5 of the aforesaid report is relevant for our purpose and the said paragraphs are reproduce below:-

“4. Under the law as it stands orders granting, refusing or cancelling bail are interlocutory orders and therefore such orders are not revisable in view of section 397(2) Cr. P.C. It is only in very exceptional circumstances the court may however exercise its inherent powers under section 482 Cr. P.C. against an order of cancellation of bail if that is absolutely necessary for preventing abuse of the process of the court or for securing the ends of justice. Ordinarily such power may be exercised when the order has been passed without jurisdiction or in the absence of material in support of the same thereby resulting into miscarriage of justice, but such power should not ordinarily be exercised by reaching a conclusion through reappreciation or revaluation of materials which may *prima facie* support the impugned order. The order of the learned Sessions Judge challenged before us is indeed *ex facie* an order cancelling interim bail granted by the learned SDJM after the petitioners surrendered before the SDJM on obtaining an order of anticipatory bail in their favour from the learned Sessions Judge. *Prima facie* therefore a revisional application under section 397 would not be maintainable against the order of cancellation of bail inasmuch as such order is an interlocutory order in respect of which revision is barred by section 397(2) Cr. P.C. We are

also afraid whether it would be a fit case for exercise of inherent power under section 482 Cr. P.C.

5. But then this matter has a different dimension which deserves consideration. As we have already mentioned the petitioners obtained an order of anticipatory bail from the learned Sessions Judge on 10.8.98. The learned Sessions Judge also directed that the order of the anticipatory bail would remain in force for three weeks. In the background of the order of anticipatory bail the petitioners promptly surrendered before the SDJM on 13.8.98 and 17.8.98 in batches well within the operational period of the order of anticipatory bail, and prayed for regular bail before the learned SDJM. Keeping the application for bail pending the learned SDJM granted interim bail to the petitioners. This order of interim bail was challenged before the Sessions Judge and the Sessions Judge by elaborate discussion in his impugned order found that this case being one under section 302 IPC the learned Magistrate granted interim bail to the petitioners without jurisdiction by ignoring the relevant aspects of the provisions of section 437 Cr. P.C. In our view this is however an erroneous approach in the circumstances of this particular case. It has to be pointed out here that in granting interim bail during the pendency of the application for regular bail after the petitioners surrendered before the learned SDJM in the backdrop of the anticipatory bail granted to them by higher court, the learned Magistrate was indeed not acting under section 437 Cr. P.C. strictly speaking, and he was rather at that stage acting in consonance with the decisions of the Supreme Court in *Sallauddin v. State of Maharashtra*, (1996) 1 SCC 667 and *K.L. Verma v. State* 1997 C.Cr. L.R. (SC) 88. The following observations of the Supreme Court in *K.L. Verma v. State* (supra) deserves notice:—

“This court further observed that anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed. It was, therefore, pointed out that it was necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is

submitted. By this, what the court desired to convey was that an order of anticipatory bail does not ensure till that end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court if they so desire. This decision was not intended to convey that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits. The decision in *Sallauddin's case* has to be so understood.”

8. The order of the Division Bench does not deal with the question as to whether the order of cancellation of bail is revisable or not. The question which came before the Division Bench of this Court for consideration is as to whether after granting anticipatory bail the learned Sub-Divisional Judicial Magistrate was correct in passing an order of interim bail upon an application under Section 437 of the Cr.P.C and whether the said interim bail could be cancelled by the learned District Judge or not. The Division Bench of this Court had no scope to decide the judgment of the Hon'ble Supreme Court in **Dr. Narendra K. Amin vs. State of Gujarat & Anr. (supra) and Usmanbhai Dawoodbhai Menon & Ors. Vs. State of Gujarat (supra)**. In view of the above discussion, I do

not find any reason to alter the findings with regard to revisability of an order of cancellation of bail.

9. Accordingly, I do not find any merit in the instant revision and the revision is dismissed.

(Bibek Chaudhuri, J.)