

27.04.2023
Court-42
Item No.-4

CRR 1047 of 2023

**Sri Vishal @ Bishal Haldar
Vs.
The State of West Bengal & Anr.**

For the State: Mr. Ranabir Roychowdhury, Adv.,
Ms. Saryati Datta, Adv.

An order dated 13th March, 2023 passed in NDPS Case No.01 of 2022 by the learned Special Judge (NDPS Act) at Raiganj, Uttar Dinajpur in setting aside its own order dated 4th March, 2022 is assailed in the instant revision.

By an order dated 13th March, 2022 the learned Special Judge canceled his own order of granting bail in favour of the petitioner on 4th March, 2023.

It is needless to say that an order of cancellation of bail may be passed by the same court which granted bail under the provision of Section 437(5) of the Cr.P.C.

It is no longer res integra that the order granting, rejecting or cancelling bail of an accused is an interlocutory order and such order is in revisable.

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 **(1997) 4 SCC 137**, it was categorically held that against the order 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**,

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.

The above-mentioned judgements of the Hon'ble Supreme Court was not cited at the bar when this Court delivered judgment in CRR 822 of 2022 and CRR 4647 of 2022.

In CRR 822 of 2022, the learned Advocate for the petitioner obviously referred to the decisions of the Hon'ble Supreme Court in **Dolat Ram Vs. State of Haryana, 1995 (1) SCC 349** and **Mr.X Vs. 4 State of Telangana & Anr. (2018) 16 SCC 511**. However, in both the said reported decisions, the Hon'ble Supreme Court exercised its power under Article 136 of the Constitution of India. The Hon'ble Supreme Court never said that the High Court has the power under Section 397 read with Section 401 of the Code of Criminal Procedure or under Section 482 of the Code of Criminal Procedure to consider the legality, validity and propriety of an order granting, refusing and cancelling bail.

In view of the aforesaid discussions, the decisions passed by this Court in CRR 822 of 2022 and CRR 4647 of 2022 cannot be treated as a precedent and it is frankly stated that this Court failed to decide the issue in his proper perspective on the basis of the decisions of the Hon'ble Supreme Court.

In view of the above discussion, the instant revision is disposed of.

The petitioner is at liberty to take recourse as available under the law in the Court below.

(Bibek Chaudhuri, J.)