

15.05.2023
Court- 42
Item-17

CRR/1194/2023

Prasenjit Singha Roy & Anr.
-Vs-
The State of West Bengal & Anr.

For the petitioner:

Mr. Sourav Chatterjee, Adv.,
Mr. Somnath Adhikary, Adv.
Mr. Soumyajit Das Mahapatra, Adv.,
Mr. Supriyo Das, Adv.

An order dated 17th March, 2023 passed by the learned Chief Judge, City Sessions Court, Calcutta in Criminal Misc Case No.418 of 2022 whereby petitioners' ad interim bail has been cancelled in connection with Taltala P.S Case No.96 of 2022 dated 19th July, 2022 under Sections 120B/170/365/395/466/467/471/34 of the IPC is assailed in the instant revision.

Before dealing with the impugned order, suffice it to say that on 9th June, 2022 a sum of Rs.1.25 crores was snatched away by some unknown miscreants appearing to be police personnel from the possession of the complainant on 19th July, 2022. The complainant lodged a complaint with the Officer-in-Charge of Taltala Police Station Case No.96 of 2022 dated 19th July, 2022 under Sections 120B/170/365/395 of the IPC. During investigation police arrested four accused persons and a sum of Rs.7.9 lakhs were recovered from their possession. Subsequently, on 27th September, 2022 they were granted bail. The prosecution filed Criminal Misc Case No.418 of 2022 under Section 439(2) of the Cr.P.C alleging, inter

alia, that the impugned order dated 27th September, 2022 is liable to be cancelled. The learned Chief Judge, City Sessions Court vide order dated 17th March, 2023 observed that out of total Rs.1.25 crores robbed of money only Rs.17.5 lakhs was recovered. Stolen money was recovered from the accused persons. The said money was distributed at Spandan Guest House at New Town, Action Area-I, Rajarhat. The learned Magistrate without considering the materials in case diary granted interim bail in favour of the petitioners. Thus, the learned Magistrate cancelled the application for bail. Learned Advocate for the petitioners submits that this Court in CRR No.1241 of 2023 and CRR 576 of 2023 held relying on the decision of the Hon'ble Supreme Court in **Madhu Limaye vs. State of Maharashtra : AIR 1978 SC 47, Amar Nath & Ors. vs. State of Haryana & Ors : (1997) 4 SCC 137, Dr. Narendra K. Amin vs. State of Gujarat & Anr : (2008) 13 SCC 584, Mohit @ Sonu & Anr. vs. State of Uttar Pradesh & Anr. : (2013) 7 SCC 789** and **Usmanbhai Dawoodbhai Menon & Ors. Vs. State of Gujarat : (1988) Crlj 938 (SC)** that an order of granting, refusing or cancelling bail are interlocutory in nature and revision is not maintainable against the said order.

However, Mr. Chatterjee, learned Advocate for the petitioners invites the court to consider the issue on the touchstone of Section 397(2) of the Cr.P.C and Section 482 of the Cr.P.C referring to a decision of the Hon'ble Supreme Court in **Hooghly Mills Company Ltd. vs. State of West Bengal & Anr.** reported in **(2020) 18 SCC 568**. It is submitted by Mr. Chatterjee that Section 397(2) of the Court provides that the High Court's powers of revision shall not be exercised in relation to any

interlocutory order passed in any appeal, inquiry, trial or other proceeding. Whereas Section 482 Cr.P.C provides that nothing in the Cr.P.C will limit the High Court's inherent powers to prevent abuse of process or to secure the ends of justice. Hence the High Court may exercise its inherent powers under Section 482 to set aside an interlocutory order, notwithstanding the bar under Section 397(2). However it is settled law that this can only be done in exceptional cases. This is, for example, where a criminal proceeding has been initiated illegally, vexatiously or without jurisdiction.

Mr. Chatterjee also refers to the decision of the Hon'ble Supreme Court in the case of **Krishnan & Anr. vs. Krishnaveni & Anr.** reported in **(1997) 4 SCC 241**. In the said report, the Hon'ble Supreme Court consider **Madhu Limaye (supra)** and also **V.C. Shukla vs. State through CBI : 1980 SCC (Cri) 695** and came to the conclusion that the revision before the High Court under Sub-Section (1) of Section 397 is prohibited by Sub-Section (3) thereof. But inherent power of the High Court is still available under Section 482 of the Code as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.

I have respectfully considered the aforementioned judgments of the Hon'ble Supreme Court. On careful perusal of the said judgments, it appears to this Court that the Hon'ble Supreme Court while discussing the scope of Section 482 of the Code of Criminal Procedure came to the finding that in certain cases even interlocutory orders is revisable invoking the jurisdiction of Section 482

especially when the order causes miscarriage of justice or it is utterly abuse of the process of the Law.

The learned Chief Judge, City Sessions Court passed the impugned order under Section 439(2) of the Cr.P.C. Prior to that the accused persons/petitioners were released on interim bail. In view of the cancellation of bail they are required to surrender and to be taken to custody. Thereafter it is open for the petitioners to prefer fresh application for bail, the petitioners are in remediless. The impugned order was also not out of jurisdiction.

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

(Bibek Chaudhuri, J.)