

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1241 of 2023

**Arabinda Rai @ Munna @ Ramesh Singh @ Ram Singh
Vs.
State of West Bengal**

**For the petitioner : Mr. Imtiaz Ahmed,,
Mrs. Ghazala Firdaus,
Mr. Md. Aammar Zaki,
Mr. Sk. Saidullah,
Mr. Mithun Mondal,
Mr. Md. Arsalan,
Mr. Shibasish Banerjee**

Judgement on : 18.04.2023.

Bibek Chaudhuri, J.

An order dated 17th March, 2023 passed by the learned Chief Judge, City Sessions Court in Criminal Misc. Case No. 418/2022 arising out of GR(NS) Case No. 639/2022 corresponding to Taltala Police Station Case No. 96 dated 19th July, 2022 under Sections 120B/170/365/395/466/467/471/34 of the Indian Penal Code canceling bail granted to the petitioner by the learned Additional Chief Metropolitan Magistrate-II, Calcutta is assailed in the instant revision. On 17th April, 2023 when the matter was taken up for hearing a question was raised as to whether an order granting, refusing or

cancelling bail is an interlocutory order or not and if it is an interlocutory order whether such order is revisable or not.

The learned Advocate for the petitioner has submitted series of decisions in support of his contention that an order of cancellation of bail is a revisable order to be entertained by the Court of revision. First, he submits the well-celebrated decision of the Hon'ble Supreme Court in the case of ***State (Delhi Administration) –Vs.- Sanjoy Gandhi*** reported in ***AIR 1978 SC 961***. In the said decision it is held that rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot be itself justify the inference that the accused has won them over. A brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation.

Thus, ***Sanjoy Gandhi***(supra) does not decide the question as to whether an order of cancellation of bail is an interlocutory order or not. This judgment speaks about the parameters of consideration of an application for bail and an application for cancellation of bail.

Mr. Ahmed, learned Advocate for the petitioner next draws my attention to a decision of a Coordinate Bench of this Court in the case of ***Sayantani Chatterjee –Vs.- The State of West Bengal*** reported in ***2016 SCC OnLine Cal 4572***. In the said report, this Court was

pleased to modify the order passed by the learned Magistrate for cancellation of bail of the petitioner. The learned Magistrate was directed to hear out the application for bail afresh if the petitioner filed such application taking into consideration that the offence committed by the petitioner is chargeable under Section 304 of the Indian Penal Code and not under Section 304 Part – II of the Indian Penal Code. In this case also learned Magistrate was directed to consider the prayer for bail if it is filed by the accused afresh. The Hon'ble Judge did not set aside the order of cancellation of bail.

In Re: **Harish Acharya & Anr.** reported in **2012 SCC OnLine Cal 7084** a Coordinate Bench of this Court directed the learned Additional Chief Judicial Magistrate, Alipore to decide the application for cancellation of bail without insisting further presence of the accused persons in the Court on the day orders upon the petitioners for cancellation of bail are to be pronounced.

The learned Advocate for the petitioner also refers to a decision passed by this Court in CRR/4647/2022 on 24th February, 2023. In the said order this Court had no opportunity to consider the legality, validity and propriety of the impugned order of cancellation of bail. The said order of cancellation of bail was set aside and the petitioner was permitted to remain on same bail. Similar order was passed by this Court in CRR/822/2022 on 2nd August, 2022 and set aside the order of cancellation of bail and consequently directed the learned Trial Judge to rehear Criminal Misc. Case No. 58/2022 after giving an opportunity to the accused/petitioner of hearing. The learned Trial Judge is also directed to take into consideration that on 2nd March, 2022 itself he granted bail to the accused in a subsequent case under Sections 188/195A/506 of the Indian Penal Code. He was also

directed to consider the case diary of both the cases. Thus, it is found that except the above-mentioned two cases where the judgment was passed by this Court in CRR/822/2022 and CRR/4647/2022 this Court did never consider the issue as to whether a Court of revision can entertain an order of cancellation of bail to test its legality, validity and propriety.

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.*

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 such view of the matter, I am not in a position to entertain the instant revision. Before I part with, I must extend a note of appreciation to Mr. Ahmed that he has thoroughly conducted research about the instant matter and placed various judgments on the issue which held the Court to decide the issue in its proper perspective.

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.)