

30.08.2023

Item No.70
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2406 of 2023

In the matter of : **Mobarak Hossain Sk. @
Mobarak Hossain & Anr.** ... Petitioners.

Mr. Anirban Mitra,
Mr. Amit Halder,
Mr. Amit Ray ... For the Petitioners.

Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly,
Ms. Trina Mitra ... For the State.

Mr. Prabir Majumder ... For the Opposite Party No.2.

The present revisional application has been preferred challenging the order dated 30.05.2023 passed by learned Sessions Judge, Nadia in connection with Dhubulia Police Station Case No. 296 of 2022 dated 02.08.2022 wherein the learned Sessions Judge was pleased to cancel the bail of the present petitioners viz. Mobarak Hossain Sk. @ Mobarak Hossain and Tabarak Sk. The foundation of cancellation of bail was on the reason that the petitioners obtained bail at a stage when the investigation initially commenced and Dhubulia Police Station Case No. 296 of 2022 was being investigated under Sections 341/323/325/34 of the Indian Penal Code. The medical evidence which was collected subsequently led to the investigating officer to add Sections 326 and 307 of the Indian Penal Code. The investigating officer thereafter prayed for cancellation of bail which was granted on 05.08.2022. Prayer for cancellation of bail was advanced on 16.08.2022. There were arguments over the issue. The learned Magistrate, on appreciation of the

arguments advanced on behalf of both the sides, was pleased to hold as follows :

“But in the present case, no such evidence comes before this Court from the side of the I.O. that their had any

- Interference or attempt to interfere with the due process of investigation.
- Evasion or attempt to evade investigation.
- Misuse of the liberty granted to the accused person.
- Possibility of the accused absconding or fleeing to another country.
- Likelihood of actual misuse of bail.
- Likelihood of the accused tampering with the evidence, obstructing the investigation or threatening witness.”

The *de facto* complainant/opposite party no.2 viz. Sahidul Haque Chowdhury applied for cancellation of bail before the learned Sessions Judge invoking the jurisdiction under Section 439(2) of the Code of Criminal Procedure. The learned sessions court by exercising its authority under Section 439(2) of the Code of Criminal Procedure cancelled the bail of the present petitioners. The issue which weighed with the learned sessions court was that at the time when the bail was obtained on 05.08.2023, the offences complained of were bailable in nature. Subsequently there was addition of Sections 326 and 307 of the Indian Penal Code which changed the nature, character and gravity of the offence and as such, fresh bail ought to have been sought for by the accused on the merits of the case. The petitioners contested both before the learned Magistrate as well as before the learned sessions court regarding the issue of bail not being

cancelled. There is difference between misuse of liberty of the bail being granted and perversity in the order of bail being granted. In the instant case by addition of Sections 326 and 307 of the Indian Penal Code, the nature and gravity of the offence completely changed. It was incumbent upon the present petitioners to seek for appropriate remedies in the changed circumstances.

Mr. Mitra, learned advocate appearing for the petitioners relied upon a decision of the Hon'ble Supreme Court in ***Dolat Ram and others Vs. State of Haryana*** reported in ***(1995) 1 Supreme Court Cases 349***. Learned advocate referred to paragraph 4 of the said judgement which is set out as follows :

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the

factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

The content of the observations made in the said judgement refers to interference with the process of law or due course of justice or very overwhelming and cogent reasons being required for cancelling a bail which has already been granted. It also reminds the courts not to cancel a bail in a mechanical manner. It is also a settled proposition of law that once in course of investigation, the gravity of the offence changes, it is for the court of law to decide whether the heinousness of the offence calls for continuation of the same bail or the order of earlier bail should be interfered with.

Having considered the reasons so passed by the learned Judicial Magistrate in his order dated 15.09.2022, I find that what weighed with the court was that it is only the supervening circumstances which can lead to an order for cancellation of bail. The position of law is completely different and it is a settled proposition of law that addition of Sections under grievous offence requires the accused to take a fresh bail. Given the present set of circumstances, I am of the view that there is no illegality in the order passed by the learned sessions court while passing the order dated 30.05.2023. Accordingly, the said order passed by the learned Sessions Judge, Nadia in Criminal Misc. Case No. 3637 of 2022 is hereby affirmed.

The petitioners are granted liberty to exhaust remedies under the law under Section 438 of the Code of Criminal Procedure in view of the fact that till date they have been

attending the courts and were pursuing remedies in different forum. If such an application is preferred pursuant to the addition of Sections 326 and 307 of the Indian Penal Code before the appropriate forum, it is for the appropriate forum to take its decision. In case such an application is not preferred within a period of thirty days, the learned Magistrate in seisin of the matter on the prayer of the investigating officer would be entitled to issue process for compelling their appearance before the investigating agency or before the court of law as is the stage of the case before the jurisdictional court.

The petitioners were attending the investigating officer of the case. The same would continue for a further period of one month.

With the aforesaid observations, the revisional application being CRR 2406 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)