

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

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.M. (DB) 2569 of 2022

The State of West Bengal

Versus

Sanny Chatterjee @ Sunny Chatterjee

Ashis Das @ Asis Das @ Asish Das

Gourab Banerjee

Uttam Roy

Tanmoy Saha

Sk. Manjar Ahsan

Soumyadip Dasgupta @ Soumayadip Dasgupta

Milan Kumar Ghosh

For the Petitioner/State : Mr. Madhusudan Sur, Ld. APP.
Mr. Dipankar Pramanik, Adv.

For the Private Opposite : Mr. Milon Mukherjee, Ld. Sr. Adv.
Party Nos. 1, 3, 4, 6 & 8 Mr. Sourav Chatterjee, Adv.
Mr. Soumya Nag, Adv.

For the Private Opposite : Mr. Avik Ghatak, Adv.
Party Nos. 2, 5 & 7 Mr. Abhinav Rakshit, Adv.

Heard on : 02.01.2023

Judgment on : 17.01.2023

Md Shabbar Rashidi, J.

1. One Biswajit Barman lodged a written complaint on 11.03.2022 with Dumdum GRPS stating, inter alia, that due to the outbreak of Corona, his business was in a bad condition and he had to take loan. In order to pay off the

loan amount, he along with his family members agreed to sell out the gold ornaments. Accordingly, he got the gold ornaments converted into gold butts through his local smith. He was advised to sell the gold butts at Kolkata for better price. He was travelling from Bongaon to Sealdah carrying the gold butts for selling on 09.03.2022. At about 01.40 p.m., when his train was standing at platform no. 4 at Dumdum station, he was intercepted by at least six persons pretending to be custom officials. He was forcefully brought down from the train and was taken towards metro railway station by crossing platform no. 5. He was thereafter taken in a yellow taxi. The aforesaid persons assaulted the complainant inside taxi and extorted all his gold butts and JIO keypad mobile. A little further, the complainant was left near 'Captain Bheri'.

- 2.** On the basis of such written complaint lodged on 11.03.2022, Dumdum GRPS Case No. 9/2022 dated

11.03.2022 under sections 379/340/419/420/34 IPC was started against these unknown persons miscreants.

- 3.** While the case was being investigated the opposite party nos. 1 to 8 filed an application under section 438 of the Code of Criminal Procedure before the Learned Sessions Judge, Alipur vide CMC no. 1318 of 2022. With their bail application the aforesaid opposite parties also filed an affidavit alleged to be sworn by the de facto complainant Biswajit Barman wherein the de facto complainant declared that the case was initiated out of misunderstanding and the matter had been settled out of Court with the intervention of friends and relatives and well-wishers as well. He also declared that he had received his missing gold articles for which he was not willing to proceed with the case and he had no allegation against anybody. The de facto complainant, by his affidavit, also expressed that he had no objection if the aforesaid petitioners (respondent nos. 1 to 8) were

granted bail in connection with the said case i.e. Dumdum GRPS Case No. 9/2022 dated 11.03.2022.

- 4.** The learned Court by its order no. 2 dated 06.04.2022 granted bail to the opposite party nos. 1 to 8 in consideration of the submissions made on behalf of the de facto complainant that the stolen articles were already recovered. Consequently, the opposite party nos. 1 to 8 on the strength of such order passed in CRM 1318 of 2022 surrendered before Learned Additional Chief Judicial Magistrate, Sealdah and obtained regular bail.
- 5.** By filing the instant application being CRM (DB) 2569 of 2022, the petitioner State of West Bengal has sought to cancel the order of granting bail to the opposite party nos. 1 to 8 in CRM no. 1318 of 2022. It has been submitted that the case cannot be treated as a simple case of theft under section 379 of the Indian Penal Code. It is contended that there were six accused persons kept in the offence and the purport of the crime narrated in the written complaint discloses the case to be case of

dacoity punishable under section 395 of the Indian Penal Code. The case is still under investigation. CCTV footage of the place of occurrence has been seized in course of investigation. There are every likelihood that the case may turn out to be that punishable under section 395 of the Indian Penal Code. It has also been stated that the opposite parties were served with notices under section 41A of the Code of Criminal Procedure and they have not complied the same for which warrant of arrest was issued against them. It was also contended that the de facto complainant has been gained over. The dispute involved in the case are not at all private in nature, rather it has a bearing on the society at large and the de-facto complainant was not at all competent to register his no objection for the purpose of grant of bail to the opposite parties. It has also been submitted on behalf of the State of West Bengal that all the opposite parties involved of this case, as an accused, are police personnel and their custodial interrogation is very much required for the

purpose of unearthing the truth. It is submitted that the aforesaid relevant materials have not been taken into consideration at the time of appearing of the anticipatory bail application for which anticipatory bail so granted by learned Sessions Judge is liable to be cancelled. The necessary ingredients like nature and seriousness of the offence, severity of the prescribed punishment, reasonable possibility of absconsion of the opposite parties together with the apprehension of tampering with the evidence and witnesses and larger interest of the public were not considered by learned Sessions Judge while granting bail to the opposite parties.

- 6.** Opposite party nos. 1,3,4,6 and 8 and also the opposite party nos. 2, 5 and 7 opposed the prayer for cancellation of bail by filing respectively separate affidavits-in-opposition. In their affidavit-in-opposition, the aforesaid opposite parties denied the allegation made on behalf of the State of West Bengal. It was admitted on their behalf that the opposite parties were police

personnel. It was contended that the opposite parties including opposite party nos. 1,3,4,6 and 8 were placed under suspension but, later on, their suspension was withdrawn. It has also been submitted that no offences at all were committed by the opposite parties. They have also submitted that the State of West Bengal has acted illegally and in an irresponsible manner in filing the application for cancellation of bail of the opposite parties in so far as no steps have been taken on its behalf for addition of section 395 of the Indian Penal Code in the case. The aforesaid opposite parties also submitted that the grounds set forth for cancellation of their bail are vague, cryptic and ambiguous. It is also contended that prior to filing the affidavit of no objection, the de facto complainant also filed an application in the jurisdictional Court for withdrawal of the proceeding and, thereby, denied the allegations of the petitioner that the de-facto complainant has been gained over. It is further contended that the opposite parties have never misused

bail and have been cooperating in the investigation since being released on bail and, as such, there are no valid grounds for cancellation of the bail granted to the opposite parties. In their opposition, denying the submission made in paragraph 17 of the petition, the aforesaid opposite parties submitted that if police officers and/or police officials are required to justify each and every action taken in bona fide belief and/or good faith in discharge of their official duty, then no police officer will try to prevent a crime based on a sourced information which may tend to have a negative impact upon the morale of police personnel across the state. No police officer will dare to work out a sourced information. It has also been submitted that the opposite party no. 8 is still under suspension and the suspension of remaining opposite parties have been revoked after a considerable period of suspension. Nevertheless, the investigation does not disclose that any of the opposite parties have procured any personnel gain out of the alleged incident.

It has also been contended on behalf of the opposite parties that learned Sessions Judge considered the facts and circumstances of the case and granted anticipatory bail to the opposite parties upon hearing the parties including learned Public Prosecutor the aforesaid order of learned Session Judge was well-founded in consideration of the materials on record and as such it cannot be termed as a perverse order.

- 7.** The petitioner/State of West Bengal also filed separate affidavits in reply to the two affidavits-in-opposition denying all the averments and allegations made therein.
- 8.** By filing the instant proceeding, the petitioner/State of West Bengal seeks cancellation of anticipatory bail and consequential regular bail granted by learned Sessions judge vide order passed in CRM 1318 of 2022 on 06.04.2022.
- 9.** It is well settled principle of law that every individual has a right guaranteed under Article 21 of the

Constitution of India, to protection of his life and personal liberty except according to procedure established by law. However, with in order to safeguard the society from peril and menace, the law of the land provides for arrest of accused.

10. Section 439 of the Code of Criminal Procedure, 1973 provides for adjudicating a Bail Application. At the time of consideration of a bail application the Courts are expected to take into consideration several aspects viz. the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds.

11. However, while adjudicating a bail application, the court has to only opine as to whether there is prima facie case against the accused. Meticulous examination

of the evidence collected by the police, is required to be considered in order to adjudicate a bail applications.

12. Similarly, The nature of the offence is one of the basic considerations for the grant of bail; more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter. The gravity of an offence can be ascertained by the length of sentence provided in law. Such consideration with regard to the gravity of offence is a factor in adjudicating a bail application.

13. As has been pointed out by the petitioner that while granting bail, the courts should take into account certain factors, subject of course, to the factual matrix of the case. The said factors as emanated from various judicial pronouncements may be summarized as :-

- i. The nature of accusation and the severity of the punishment in the case of conviction and the nature of

materials relied upon by the prosecution;

- ii. Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
- iii. Reasonable possibility of securing the presence of the Accused at the time of trial or the likelihood of his abscondence;
- iv. Character behaviour and standing of the Accused and the circumstances which are peculiar to the Accused;
- v. Larger interest of the public or the State.

14. Learned advocate for the petitioner submitted that while considering the bail application of the opposite parties learned Sessions Judge, ignored the aforesaid factors and granted bail. For the aforesaid reason, the

order granting bail is bad in law. It has been contended on behalf of the petitioner that the order granting bail passed on 06.04.2022 is liable to be cancelled.

15. Various judicial pronouncements have set forth certain guiding principles where bail granted in a case may be cancelled viz.

- i. Interference or attempt to interfere with the due course of administration of justice;
- ii. Evasion or attempt to evade the due course of justice;
- iii. Abuse of the concession granted to the accused;
- iv. Possibility of the accused absconding;
- v. Likelihood of misuse of bail.
- vi. Likelihood of the accused tampering with the evidence or threatening witnesses;
- vii. Other supervening circumstances, which have rendered it no longer conducive to a

fair trial to allow the accused to retain his freedom by being on bail.

16. In the case at hand, the opposite parties were granted bail on consideration that the case being investigated under sections 379/419/420 of the Indian Penal Code and that the case was settled by and between the parties, offences being compoundable in nature.

17. Apparently, the privilege has not been misused by the opposite parties being released on bail. However, so far as other considerations are concerned, our attention was drawn to the fact that the opposite parties have not complied with the notice under section 41A of Criminal Procedure Code, served upon them meaning thereby that the opposite parties are evading the due course of justice. Such a conduct on the part of the opposite parties is highly depreciable giving rise to an inference of the possibility of absconsion of the opposite parties so released on bail.

18. Moreover, the story narrated in the First Information Report, the de-facto complainant was forcefully dragged out of the train, assaulted and taken into a taxi. He was assaulted by them and left at a secluded place after snatching the gold butts.

19. The impugned order goes to impress that the learned Sessions Judge, while considering the bail application of the opposite parties was swayed by the sections of law which were enumerated by the GRPS official in the First Information Report and went on granting anticipatory bail considering the compoundable nature of the offences complained of.

20. Time and again it has been laid down by the Hon'ble Supreme Court and the High Courts in diverse judicial pronouncements that the courts must apply its judicial mind to the facts narrated in the complaint in order to determine what offence has actually been committed instead of going by the section of law described therein.

21. The facts narrated in the written complaint lodge by the de-facto complainant, to our opinion, clearly embodies the elements of commission of an offence of robbery or dacoity which is not a compoundable offence in accordance with the provisions of section 320 of the Code of Criminal Procedure. The recording officer, probably, registered a case under section 419/420 of the Indian Penal Code on the basis of the allegation in the complaint that the opposite parties pretended themselves before the de-facto complainant as the officers of customs. However, the allegation of 'chintai' in the complaint was apparently not taken into consideration and no section for the offence of alleged 'chintai' which would surely mean an offence of robbery was not slapped in the First Information Report.

22. The learned court of Sessions, while considering bail application of the opposite parties also appear to have not applied his mind to the allegations disclosed in the petition of complaint and went by the sections of law

apparent on the First Information Report. Accordingly, bail under section 438 of the Code of Criminal Procedure was granted as the de-facto complainant filed an affidavit to the effect that the case was settled out of court and he was not willing to proceed with the case on the plea of receiving back the stolen articles.

23. Such conduct of procuring the affidavit of compromise from the de-facto complainant and non compliance of a notice under section 41A of the Criminal Procedure Code may well be construed as interference in the investigation.

24. Not only that, the opposite parties, allegedly committed the snatching of the valuable belongings of the de-facto complainant and unilaterally entered into compromise with him upon return of the said belongings without the intervention of the court or the investigating agency clearly shows that the alleged seizure of the articles were not accounted for by the opposite parties, had they been working out a source of information of the

commission of a cognizable offence. In the order granting bail to the opposite parties Nos. 1 to 8, there was also no consideration as to what made the police officers to represent themselves as custom officials while working out a source information of the commission of a cognizable offence. Nothing appears to have been brought forth that opposite parties were, at the relevant point of time, out to work out the source information. There is nothing to suggest that their exit and return, for the purpose of working out source information, was routinely diarised in the relevant register maintained at the police station where they were posted. The alleged seized articles were not reported and accounted by the opposite parties and were returned, if at all returned, to the de-facto complainant without the intervention of the learned court or the investigating and/or superior officers. Such conduct on the part of the opposite parties Nos. 1 to 8, leaves a serious possibility of them being in a position of tampering with the evidence and/or witnesses. Working

out a source information cannot be taken to give licence to a police officer to do whatever they like, in any manner, giving a go by to the established procedure of law.

25. At the time of argument, learned Senior advocate appearing for the private opposite parties, has also submitted that the opposite parties are police personnel and as such they are protected in terms of the provisions under section 197 of the Code of Criminal Procedure. The prosecution ought to have obtain a valid sanction for the prosecution of the opposite parties as they, at the relevant time were public servants contemplated under the said provision of the Code of Criminal Procedure. The relevant notifications issued by the State Government has been placed extending the benefit of section 197 of the Code of Criminal Procedure to the class of officers the opposite parties belong.

26. In support of his contention, learned senior advocate has drawn our attention to the judgment

passed by a single bench of this Hon'ble Court in CRR 625 of 2016. In the aforesaid judgment, a question as to whether a valid sanction is required prior to an order of investigation being passed under Section 156(3) of the Code of Criminal Procedure against public servants was under consideration. The single bench considered the question at length and came to a conclusion that since the matter was directed to be placed before larger bench of the Hon'ble Supreme Court for a decision, refrained from giving a dictum on the subject. However, based on the last of the authorities operating on the subject prior to it being referred to larger bench, the single bench, in the aforementioned judgment, decided the matter in favour of the necessity of previous sanction for prosecuting a public servant in following terms, that's to say:-

“Having regard to the subject matter by way of which the petitioner has attempted to invoke the provisions of Section 156(3) of the Code of

Criminal Procedure against the public servants this Court is of the opinion that as the provision of Section 197 of the Code of Criminal Procedure has been incorporated in the statute, the same has been for a meaningful purpose of allowing the public servants to discharge their duties without fear or favour or without any anticipation of being harassed because of the rigours of law. Therefore, ordinarily a valid sanction would be required in a proceeding where the provisions of Section 156(3) Cr.P.C. are invoked against public servants. However, in this case substantive offences as alleged have not been made out, so the issue of sanction is an additional consideration.

27. However, while discussing the rationale and justification behind such requirement, the single bench noted the ratio laid down in a series of judgments delivered by the Hon'ble Supreme Court dealing with the

circumstances when operation of the provisions of section 197 of the Code of Criminal Procedure, 1973, can be invoked.

28. The single bench, in the aforesaid judgment, discussed that in the cases of P.K. Pradhan –Vs. – State of Sikkim, (2001)6 SCC 704; State of H.P. –Vs.– M.P. Gupta, (2004) 2 SCC 349; Choudhury Parveen Sultana – Vs.– State of W.B. & Anr., (2009) 3 SCC 398; Inspector of Police & Anr.–Vs.–Battenapatla VenkataRatnam & Anr. (2015) 13 SCC 87; Punjab State arehousing Corporation–Vs.–Bhushan Chander & Anr.,(2016) 13 SCC 44, wherein it has been settled that corruption or any illegal act cannot be done in discharge of official duty and as such sanction may not be warranted in such cases. The judgment also spoke of the decision in Rizwan Ahmed Javed Shaikh & Ors. –Vs. – Jammal Patel & Ors., (2001) 5 SCC Abdul Wahab Ansari -Vs. – State of Bihar & Anr (2000) 8 SCC 500.

29. In the aforesaid judgments discussed by the single bench, it has been held and reiterated by the Hon'ble Supreme Court that the acts done by the public servants in the discharge of their official duty. The protection contemplated under section 197 of the Code could also be extended to include the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

30. In the case at hand, the opposite parties while purportedly acting in discharge of their official duty, intercepted the de-facto complainant on the basis of a source information. They never felt the necessity to register their exit for the purpose of working out a source information in the relevant registers maintained in the

ordinary course. There is also nothing to suggest that the matter was anyhow reported to the superior officers. They intercepted the de-facto complainant and dragged him from a train. He was forced to accompany the opposite parties into a taxi and at some distance the de-facto complainant was let free after snatching his valuables. There is no explanation when the valuables were liable to be seized in connection with commission of a cognizable offence, why the de-facto complainant was not detained for such offence. Not only that, the parting with the valuables was neither reported nor properly seized as per the established rules. The said valuables were unilaterally returned to the de-facto complainant without any express permission or otherwise of the court or the superior officers, in order to register a compromise for the purpose of obtaining bail.

- 31.** There appears no justification on the part of the opposite parties as to their action in representing themselves as customs officials.

- 32.** Such conduct on the part of the opposite party Nos. 1 to 8 undoubtedly, brings their action out of the purview of the discharge of their official duty or anything, even remotely connected to official duty as contemplated under section 197 of the Code of Criminal Procedure.
- 33.** Accordingly, we find no force in the contention of the learned senior advocate that the prosecution of the opposite parties is bad for want of proper sanction, required under section 197 of the Code of Criminal Procedure, 1973.
- 34.** Moreover, the opposite parties have already participated in the proceeding and obtained bail therein without challenging their prosecution sans a valid sanction at the relevant time, such contention on their behalf seems to be belated.
- 35.** For the aforesaid reasons, we do find and hold that the order granting anticipatory bail to the opposite parties Nos. 1 to 8 being Order No. 2 date 06.04.2022 passed by learned Sessions Judge, Alipur, (South 24

Parganas) is unfounded, based on wrong proposition of law and palpably perverse and hence, liable to be cancelled.

36. Accordingly, the bail order granted to the opposite parties Nos. 1 to 8, by Order No. 2 date 06.04.2022 passed by learned Sessions Judge, Alipur (South 24 Parganas) in CMC No. 1318 of 2022, is hereby cancelled.

37. All consequential steps taken on the basis of such order of bail granted in consideration of an application under section 438 of Code of Criminal Procedure shall stand vacated.

38. CRM 2569 of 2022 is accordingly, allowed.

[MD. SHABBAR RASHIDI, J]

39. I agree.

[DEBANGSU BASAK, J.]