

Form J(1)

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

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

CRR 4532 of 2022

**Kausar Sk. & Ors.
Vs.
State of West Bengal**

For the petitioners : Mr. Habibur Rahaman, Adv.

For the State : Mr. Aniket Mitra, Adv.

Judgement on : 16.01.2023.

Bibek Chaudhuri, J.

An order dated 22nd September, 2022 passed by the learned Sessions Judge, Nadia in Sessions Case No. 467(09)/2022 under Sections 498A/307/34 of the Indian Penal Code is assailed in the instant revision.

It is submitted on behalf of the petitioners that after filing of the charge-sheet, it was committed to the Court of sessions since the offence under Section 307 of the Indian Penal Code is exclusively triable by the Sessions Court on 21st September, 2022. The learned Sessions Judge fixed 22nd September, 2022 for appearance of the accused persons before the said Court. The learned Advocate for the petitioners/accused persons prayed for an adjournment on 22nd September, 2022 on the ground that he did not find any time to

intimate the accused persons about the said date. However, the learned Sessions Judge rejected the said prayer made on behalf of the petitioners and issued warrant of arrest against the accused persons.

It is submitted on behalf of the petitioners that the petitioners are ready and willing to face trial. They always cooperated in the Court of the learned Chief Judicial Magistrate. However, they failed to understand that the learned Sessions Judge would fix the very next date of commitment for appearance of the accused persons. They are now ready to surrender before the Trial Court but they apprehend that they may be taken to custody.

On perusal of the averment made in the instant revision and having heard the learned Advocate for the petitioner, this Court is of the view that the instant revision can be disposed of with the assistance of the learned Public Prosecutor-in-Charge.

Mr. Aniket Mitra, learned Public Prosecutor-in-Charge is requested to assist this Court in the instant matter. The learned Advocate for the petitioners is directed to hand over a copy of the application to Mr. Mitra which he does. Appointment of Mr. Mitra be regularized by the learned Legal Remembrancer, Government of West Bengal.

Having heard the learned Advocate for the petitioners and the learned Public Prosecutor-in-Charge and on perusal of the impugned order this Court finds that the impugned order is *per se* illegal and liable to be rejected. The learned Sessions Judge issued warrant of arrest against the accused persons without canceling the previous order of bail and initiating a proceeding under Section 446 of the Code of Criminal Procedure against the sureties. Thus when warrant of arrest was issued by the learned Sessions Judge on 22nd September,

2022, the bail bonds submitted by the accused persons were still in force.

Therefore, the said order suffers from illegality and gross material irregularity.

It is submitted by the learned Advocate for the petitioners that they will surrender before the Court of the learned Sessions Judge, Nadia within one week to face trial of the above-mentioned Sessions case.

In view of such submission, the petitioners/accused persons are directed to surrender before the Trial Court on 30th January, 2023 and on such surrender, the learned Sessions Judge will consider the prayer for bail of the petitioners leniently since they were previously enjoying bail.

In the meantime, execution of warrant of arrest issued in the name of the petitioners be kept in abeyance till 31st January, 2023.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 20.