

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1504 of 2022

Abdul Rafik Mondal @ Rafik Mondal & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Soumen Kumar Dutta,
Mr. Subham Dutta,
Mr. Sk. Sayan Uddin.

For the State

: Mr. Imran Ali,
Ms. Rita Dutta.

For the Opposite Party No. 2

: Mr. Uday Sankar Chattopadhyay,
Ms. Aishwarya Datta.

Hearing concluded on

: 29.04.2024

Judgment on

: 22.05.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order No.22 dated 19.04.2022 passed by the Learned Sessions Judge, Purba Bardhaman in Criminal Misc. Case No. 1597 of 2020 rejecting the bail granted in favour of the petitioners by the order dated 01.09.2020.
2. The allegations against the petitioners herein in Memari Police Station Case No. 358 of 2020 dated 04.08.2020 under Sections 341/323/325/326/307/34 IPC is as follows:-

“When the accused persons assaulted the victim as well as the complainant with a Bamboo Stick on her head, the victim fell down on earth and her husband came to save her, then Afridi Mondal (Petitioner no. 2) assaulted on the belly of her husband by a sharp knife and he fell on the earth and thereafter when her eldest son Saiful Mondal @ Dalim came then Abdul Rafik Mondal @ Rafik Mondal (Petitioner No 1) and another accused Samser Ali Mondal caught hold of him and Afridi Mondal (Petitioner no. 2) assaulted on his belly by a knife and thereby Saiful Mondal Suffered bleeding injury.”

3. The relevant portion of the order of bail granted to the petitioner by the Learned C.J.M., Purba Bardhaman dated 01.09.2020, which was set aside by the Learned Sessions Judge by the order under revision is as follows:-

“Memari PS- 358/20

Dated: 01.09.2020

..... Bail petition filed for the accused persons is taken up for hearing.

Heard learned Defence counsel. Hd. Ld APP.

Perused the case record.

On perusal it appears that co-accused is on bail and present accused are on same footing. Hence, I do not hesitate to allow the bail prayer of present accused persons.

Accordingly accused persons may find bail of Rs. 2000/- each with one surety of like amount id to JC.

If on bail,

To date for appearance.

D/C by me.

Sd/-

C.J.M., Purba Bardhaman”

4. The Learned Sessions Judge, Burdwan by the order under revision has cancelled the Bail of the petitioners. The relevant findings are as follows:-

“Criminal Misc.-Case No.1597 of 2020

Order No. 22, Dated 19.04.2022

.....In the instant case it appears from the record that in order dated 01.09.2020 accused Afridi Mondal and Rafik Mondal surrendered and prayed for bail and Ld. Court below passed the order for shifting back the date in the case of accused Sahera Bibi and it is only mentioned that ‘heard the Ld. Defence counsel. Perused the case record. For ends of justice prayer is allowed’. So, firstly it appears to me that the order is very cryptic one. Moreover it is the observation of the court that co-accused is on bail and present accused are on same footing.

But from the case record it appears that co-accused who was granted bail earlier suffered custody for some days but these two accused persons namely Afridi and Rafik did not suffer custody. Moreover, allegation against accused Afridi is totally different who stabbed the victims on their bellies. So, allegation against these accused is very serious. So footing of these accused persons who surrendered on that day and the accused who was granted bail earlier is not same. Moreover consideration of medical documents in such serious offence is necessary for granting bail but Ld Court below did not peruse the C.D. or medical documents. There is no other ground which can justify the order for passing an order for bail of these two accused persons.

In respect of O.P. No.2 Samser Ali Mondal, Ld. Court below in his order dated 21.08.2020 stated 'perused the C.D. and considering the custody period and also considering the fact that there is no further development in the investigation since after 17.08.2020 allowed the prayer of this O.P.'. So, I find that in this event Ld. Court below applied his judicial mind. As Ld. Court below applied his judicial mind and also it is found that there is no other violation of the guidelines of the Hon'ble Apex Court as enunciated in the judgment reported in 1992 Cr.L.J.,3712.

Considering it I find that there is no necessity to interfere with the order passed by the Ld. Court below in respect of the O.P. No.2 Samser Ali Mondal.

But regarding other two accused persons it is already discussed that Ld. Court below did not consider the footings of other accused persons; did not peruse the C.D. and did not peruse the medical documents of the victims. Moreover, footings are not same. Considering it, I find that Ld. Court below did not apply his judicial mind at the time of granting bail to the O.P.s namely Afridi and Rafik Mondal. So, observation of the Division Bench of the Hon'ble Apex Court reported in 2022 SAR 326 is very much applicable in respect of the bail order passed by the Ld. Court below regarding the O.P.s namely Afridi Mondal and Rafik Mondal.

It is crystal clear that Ld. Court below did not apply his judicial mind in granting bail to these accused persons in such serious offence and as Ld. Court below did not apply his judicial mind, so, bail order in respect of accused /O.P.s Afridi Mondal and Rafik Mondal should be cancelled.....

**Sd/-
Sessions Judge, Burdwan"**

- 5. Hence the revision, challenging the said order cancelling bail of the petitioners.**
- 6. Both sides have filed their written notes of argument and the State has placed the case diary.**

7. The petitioners case is that there is a counter Case filed by them being Memari P.S. Case No. 147 of 2021 under Sections 448/323/325/379/504/506/427/34 IPC.
8. The following Judgments have been relied upon on behalf of the petitioners:-

i) Mahipal Vs. Rajesh Kumar alias Polia and Anr., (2020) 2 SCC 118, decided on 5th December, 2019.

ii) Dolat Ram and Ors. Vs. State of Haryana, (1995) 1 SCC 349, decided on 24th November, 1994.

iii) Myakala Dharmarajam and Ors. Vs. State of Telangana and Anr., (2020) 2 SCC 743, decided on 7th January, 2020.

iv) State of Maharashtra Vs. Sitaram Popat Vetel and Anr., (2004) 7 SCC 521, decided on 23rd August, 2004.

v) Samarendra Nath Bhattacharjee Vs. State of West Bengal, AIR 2004 SC 4207, decided on 25th August, 2004.

9. **From the materials on record,** it appears that the allegations against the petitioners are very serious. It is clear that the Learned Magistrate granted bail to the petitioners without considering the materials on record, more so, the medical papers. The Magistrate also granted bail to the petitioners considering that a co-accused was on bail, though the circumstances granting bail to the co-accused was different as he was already in custody and his bail was considered on medical

grounds. The allegations too are different in respect of the said accused and the petitioners herein, which is very serious.

- 10. In *Himanshu Sharma Vs The State of Madhya Pradesh, in Criminal Appeal No(s). of 2024 (arising out of SLP (Crl.) No(s). 786 of 2024), decided on 20th February, 2024*, the Supreme Court held:-**

“12.Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud.....”

- 11. In the present case**, it appears that the order of bail granted to the petitioners comes within clause (c) and (d) of para 12 of the Judgment in ***Himanshu Sharma Vs The State of Madhya Pradesh, (Supra)***.
- 12.** Thus the order under revision passed by the Learned Sessions Judge is in accordance with law and requires no interference by this Court.
- 13.** But keeping in mind, that the liberty of a person is at stake, **the criminal revision is disposed of with a direction** that the petitioners shall surrender before the Learned Sessions Judge within 30 days from the date of this order and pray for regular bail.
- 14.** The Learned Sessions Judge shall on an application made by the petitioners herein, on hearing both sides consider the prayer for bail

afresh, keeping in mind the present status of the case (stage of trial), the purpose of detention, the conduct of the petitioners and other relevant factors.

- 15.** All connected applications, if any, stand disposed of.
- 16.** Interim order, if any, stands vacated.
- 17.** Copy of this judgment be sent to the learned Trial Court and the learned Sessions Court at once.
- 18.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)