

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2423 of 2017****IN THE MATTER OF****Prem Chand Jaiswal.****Vs.****The State of West Bengal & Ors.****For the Petitioners : Mr. Arindam Jana, Adv.,
Mr. Soumajit Chatterjee, Adv.****For the State : Mr. Saswata Gopal Mukherjee, Ld. PP.,
Ms. Faria Hossain, Adv.,
Ms. Debjani Sahu, Adv.****Judgment on : 09.01.2023****Subhendu Samanta, J.**

This is an application u/s 482 read with Section 401 of the Code of Criminal Procedure preferred against an order dated 03.07.2017 passed by the Learned Sessions Judge, In-Charge Alipur in CMC No. 2820/2017 thereby modifying the conditions imposed upon the opposite party No. 2/3 while granting anticipatory bail vide order dated 15.06.2017 in CMC No. 2820 of 2017 in connection with CGR No. 1690/2017

arising out of Southport Police Station Case No. 75/2017 dated 22.04.2017 u/s 420/406/120B IPC.

The brief fact of the case is that the present petitioner filed a letter of complaint before the OC South Port Police Station against the present opposite party No. 2 and 3 alleging commission of offence punishable u/s 420/406/120B IPC. Subsequently Southport Police Station Case No. 75/2017 dated 22.04.2017 u/s 420/406/120B IPC was registered for investigation against the present opposite party No. 2 and 3.

The brief fact of the petition of complaint is that a present opposite party No. 2 and 3 had a good relation with the petitioner; on 17.08.2011 both the opposite party Nos. 2 and 3 reached the office of the petitioner and requested him to provide financial assistance. On their request the petitioner provided extended monetary help to them and paid amount of Rs. 20,0000/- vide an account payee cheques. The opposite party No. 2 and 3 agreed to pay an interest at the rate of 24% per annum on the loan amount till the time principle due along with the interest was repaid. The said cheque was encased in favour of the opposite party No. 2 under the account M/s Punjab Engineering on 17.08.2011. Thereafter the petitioner several times requested the opposite parties to refund the said loan amount along with the interest. They failed to do so.

Subsequently, the petition of complaint was lodged with the concern Police Station.

During the course of investigation the present opposite party No. 1 and 2 filed an application for anticipatory bail being Misc Case No. 2820 of 2017 before the Learned Sessions Judge, at Alipur South 24 Parganas. The prayer of anticipatory bail of the present opposite parties was heard on 15.06.2017 and the present opposite parties were enlarged on bail with a condition that they would repay the outstanding amount as per their own admission within 07 days. The opposite party No.2 and 3 thereafter filed one put up petition before the Learned Sessions Judge in the same Misc Case on 03.07.2017 for modification/waiving out the conditions of bail imposed upon them. The Learned Sessions Judge heard both sides and has passed the impugned order on 03.07.2017 clarifying that the outstanding amount means only principle amount.

Being aggrieved and dissatisfied with the said order of modification passed by the Learned Sessions Judge the present criminal revision has been preferred by the petitioner/complainant.

Learned Advocate for the petitioner submits that the Learned Sessions Judge, while passing the impugned order became totally oblivious to the effect that by modifying the

conditions for granting anticipatory bail is without jurisdiction. Learned Sessions Judge has committed grave mistake of law. Section 362 of the Code of Criminal Procedure puts an expressed bar on the Learned Sessions Judge to review or recall of order which has already been passed. After disposing of the Criminal Misc Case Being No. 2820 of 2017 dated 15.06.2017, the Learned Sessions Judge became functus officio over the same. So the order of modification passed by the Learned Sessions Judge of 03.07.2017 is expressly illegal and liable to be set aside. He further argued that according to the provisions of Sub-section 1(b) of Section 438 Cr.P.C., the application for anticipatory bail has to be disposed of within 30 days from the date of filing of the said criminal Misc case. The instant criminal Misc case was preferred on 15.05.2017 and the impugned order on the basis of put up application was passed on 03.07.2017. Accordingly the impugned Order of modification passed by the Learned Sessions Judge is a clear bar under the provisions of Section 438 (1) (b) Cr.P.C.

In support of his contention Learned Advocate for the petitioner cited The Black Law Dictionary, which defined “outstanding”. According to the said law dictionary “outstanding” means “unpaid”. He also showed the Oxford Dictionary and Thesaurus wherein the “outstanding” defined

as “not yet settled”. He submits that by virtue of the definition of the relevant dictionary the term outstanding mentioned in the order of bail included the principal along with the interest.

The Learned Sessions Judge has committed error in deciding the issue and passed an erroneous order. In support of his contention he cited several decisions **The State of Kerala Vs. MM Mani Kanton Naiyar (2011) 4 SCC 752**

The Code of Criminal Procedure does not authorise the High Court to review its own judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing of a case they are altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed.

Abdul Basit Vs. Abdul Kadi Chaudhary (2014) 10 SCC

754.

-- Held, although the court granting bail can cancel the bail on ground of accused's misconduct or new adverse facts having surfaced after the grant of bail, however, in view of express bar contained in S. 362 Cr.P.C, it cannot review its order as to grant of bail on ground of it being unjustified, illegal or perverse – Such challenge to bail order on ground of it being illegal or contrary to law can be determined only by the court superior to the court which granted bail.

On the above score the Learned Advocate for the petitioner submits that the impugned order for modification of the condition of bail is erroneous and liable to set aside.

Learned Advocate appearing on behalf of the private opposite party argued that the learned Sessions Judge has not committed any error. At the time of granting the bail the Learned Sessions judge has imposed some condition. The Learned Sessions Judge is within his jurisdiction to waive such conditions. A put up application was filed and the conditions were clarified. He specifically pointed out that the petitioner herein has preferred the petition of complaint citing an alleged amount put Rs. 63,37,730/- it is his own admission that only Rs. 20,0000/- was advanced to the present opposite parties as loan. At the time of argument for the application of anticipatory bail the Learned Advocate for the present opposite parties submits that they shall pay the principal amount. The Learned Sessions Judge has also pointed out regarding the principal amount of loan along with the interest of 24% per annum. On the basis of submission of the Learned Advocate for the opposite parties the Learned Sessions Judge has put the conditions directing the present OPs to repay the outstanding amount. It is always the contention of Learned Sessions Judge that the amount is Rs. 20,00,000/-is the principle claimed

amount of Rs 63,37,730/-. He further argued if the entire alleged amount was recovered by the way of anticipatory bail, the order of the Learned Sessions Judge would tantamount to be a final order manifesting the opposite parties to be the guilty of such offence. He submits that the Learned Sessions Judge had properly gone through the put up application and passed the impugned order mentioning outstanding amount means and includes only principal amount. He further argued the order passed by the Learned Sessions Judge is a clarification of his earlier order so, Section 362 Cr.P.C. is not applicable. He further argued that the power of the Learned Sessions Judge to dispose of the application for anticipatory bail within 30 days from the date of such application is merely directive in nature and not mandatory. On that score he cited a decision of Hon'ble Supreme Court passed in **Jyoti Kumar Pathak Vs. Kundan Chand & Ors.**

9. From the perusal of the section 3 and the various sub-sections it clearly indicates that the first proviso to Sub-section (1)(a) provides that the mere fact that a person has applied to the High Court or to the Court of Session for a direction under this section that shall not in the absence of any order of Court prevent an apprehension of such person or the detention of such person in custody by an Officer-in-charge of a police Station. Under the circumstances, the mere filing of a petition for anticipatory bail or pendency of such

application by itself will not prevent the apprehension of such person and/or detention of such person in custody by an Officer-in-charge of a Police Station unless there is a specific order by the Court concerned. Similarly, sub-section(b) although provides that the High Court or the Court of Session shall dispose of such application within thirty days from the date of such application but such power is merely directive in nature and not mandatory. As a consequence after the period of thirty days neither the application lapses nor any interim order passed on such application becomes ineffective and/or inoperative. So far proviso 2 under sub-section (b) is concerned, it is specifically provided that where accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a period of not less than 10 years, no final order shall be made on such application without giving the State not less than 7 days notice to present its case. Under those circumstances, it is abundantly clear that it does not prevent the court from passing any interim order considering the facts and circumstances and exigency of the case. However, the court should not pass any final order in the cases referred to in such proviso without giving an opportunity to the state to present its case by giving not less than 7 days' notice. There is no restriction to pass an order for interim anticipatory bail without giving, any notice to the State if the Courts think so fit to do so for ends of justice. To give any other construction to the amendment would be to accept a hostile construction to the amended section which was not the intention of the legislature. This construction, in view of this court would be in consonance with the provision of

Article 21 of the Constitution which provides:

“Article 21: no person shall be deprived of his life or personal liberty except according to procedure established by law”.

Learned Advocate for the OP also place his reliance on the same point upon the observation of the Learned Division Bench of this Court passed in **CRM 5169 of 2017 of Bikram Chatterjee Vs. State.**

He also cited some decisions reported in **Shyam Singh Vs. State (2006) 2 SCC (Cri) 613.**

Conditions imposed, if warranted—bail granted to appellant with condition that he shall continue to deposit Rs. 1,00000/- per month by way of repayment after reliance on bail on the assumption that offence had been committed by him, held, onerous unwarranted .

Santosh Kayal Vs. State of West Bengal (2014) 2 CCRLR (Cal) 261--

Conditions for granting bail—order for repaying alleged cheated amount of money --- court any error to make order imposing conditions for granting bail which Criminal Procedure Code not providing—conditions for repaying cheated amount holding allegations as true before trial—court not to act as recovery agent—conditions quashed.

Munish Bhasin and Ors. Vs. State (2009) 1 CCRLR (SC) 848.

Criminal Procedure Code, 1973—Section 438—The wife of the appellant filed criminal case against husband and his parents—Apprehending arrest the appellant and his parents applied for anticipatory bail—The High Court while granting anticipatory bail imposed condition for payment of maintenance to wife—Imposition such condition is not within the jurisdiction of the Court while granting anticipatory bail—The conditions which can be imposed while granting anticipatory bail are specified in the provision of grant of anticipatory bail—The Court has no jurisdiction to impose any other extraneous condition—Hence the condition regarding payment of maintenance is set aside—The order of anticipatory bail is maintained excluding such condition.

Learned Advocate for the OP finally submits that the impugned order of modification of order of bail passed by the Learned Sessions Judge suffers no illegality thus; the instant revision is liable to be dismissed.

Heard the Learned Advocates.

Perused the impugned order dated 15.06.2017 and 03.07.2017. Learned Sessions Judge in disposing the application u/s 438 Cr.P.C. is of view that it has been contended by the petitioner therein that they are ready and willing to repay the mount which is due. Accordingly in the operative portion of the impugned judgment conditions were given to the petitioners therein to repay the outstanding

amount within 07 days. Subsequently all put up application was filed on behalf of the petitioners therein (present Ops) regarding the clarification of the order of bail. By virtue of such put up petition the Learned Sessions Judge passed the impugned Order dated 03.07.2017 clarifying the fact that the outstanding amount means only principal amount. Let me see whether the impugned order passed by the Learned Sessions Judge dated 03.07.2017 is illegal or improper.

According to the provision of Section 362 Cr.P.C. the court can not alter his order after signature. The impugned order dated 03.07.2017 is an order of clarification for modification of order of bail passed by the said judge on 15.06.2017. The Learned Sessions Judge has every right to waive the conditions of bail on the change facts and circumstances. So by virtue of the order of modification the Sessions has committed no error. The order of modification is not come under the purview of Section 362 Cr.P.C. The ratio of the decision of Hon'ble Supreme Court passed in **State of Kerala Vs. M.N. Manikantan Naiar** is not applicable in the present case. In the cited case the Hon'ble Supreme Court has restricted the power of High Court u/s 482 Cr.P.C. and has held that the High Court cannot alter its own finding which is permissible under the order of review only.

The Learned Advocate for the petitioner has also cited the definition of “outstanding” according to the **Oxford Dictionary and Black’s Law Dictionary**. The meaning of an English term can have its several meanings and in different applications. The true grammatical meaning may not have always used in all the places. Moreover, the author of the order i.e. the Learned Sessions Judge has clarified his own order by passing the impugned order dated 03.07.2017. The sessions has jurisdiction to explain any term used in his own order. So the strict meaning of any term of English language cannot be strictly followed.

It further appears that the entire prosecution case is based upon the claim of Rs. 67, 37,730/-. If the said amount is directed to be deposited then, the Learned Sessions Judge, surely pre-judge the case at the stage of hearing of a bail petition. By virtue of a decision of Hon’ble Supreme Court placed by the opposite party in **Shyam Singh** (supra) and **Santosh Giri** (supra) and ratio decidendi thereof is squarely applicable in this case.

I find no illegality or impropriety in the impugned judgment.

Accordingly I find no merit to entertain the instant criminal revision. Accordingly, the instant criminal revision is dismissed.

CRR is disposed of.

Connected CRAN applications if pending, are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)