

CRR 4801 of 2022

**Md. Tarique Malik & Anr.
Vs.
The State of West Bengal & Anr.**

Mr. Tarique Quasimuddin Md. Faizan Yakub Ms. Hera Madni	...for the Petitioners
Mr. Suman De Mr. Aritra Bhattacharya	...for the State

Private opposite party is not represented.

This application has been preferred challenging the order dated 19th December, 2022 passed by the learned Additional Chief Judicial Magistrate, Kolkata in GR (NS) case no. 977 of 2022. By the impugned order, learned court below cancelled the bail order granted to the petitioners/accused.

It is submitted by the petitioner that on the basis of the complain made by the opposite party no. 2 herein, present criminal proceeding was started under Section 504/506/324/295A/298/34 of the Indian Penal Code. As per allegation, the petitioners had assaulted opposite party no. 2 physically and also committed other offences. It is further submitted that a case and a counter-case have been initiated by the parties. However, in connection with the said proceeding, both the petitioners herein were arrested and produced before the court below and learned court below by an order dated 10th November, 2022, was pleased to release both the accused persons on furnishing a bond of Rs. 500/- with registered surety of like

amount. Upon furnishing bail bond, the petitioners were released on bail. Thereafter, the opposite party no. 2/complainant on 18th November, 2022 made a prayer before the court below for cancellation of the bail under Section 437(5) of the Code of Criminal Procedure alleging that after obtaining bail from the court below, the petitioners are threatening and intimidating the defacto-complainant/petitioner for withdrawal of the case on various manner and for which he is suffering from mental agony and trauma.

Upon hearing learned counsel for the parties, the court below observed that on the basis of a report submitted by the Investigating Officer dated 2nd December, 2022 containing the statement of opposite party no. 2 herein/complainant, recorded under Section 161 of the Code and also based on a subsequent G.D. entry, cancelled the bail order, granted earlier.

Learned counsel for the petitioner submits that the allegation is totally false and it is well settled that bail once granted, cannot be cancelled in a mechanical way. In the present context, it is palpably clear that the G.D entry dated 27.11.2022 made by the complainant/opposite party no. 2 herein as well as the statement recorded by police under Section 161 of the Code on 1.12.2022 are all afterthought and has no basis at all. Accordingly, he prayed for setting aside the order impugned.

Learned counsel for the State submits that it only appears from the case diary that the police has recorded one statement of the complainant on 1.12.2022 and collected one GD entry in support of the allegation.

Having considered the facts and circumstances, it appears that prayer for cancellation of bail dated 18th November, 2022 does not contain any specific date as to when and where such threatening or alleged criminal intimidation allegedly made by the petitioner. No complain was lodged anywhere prior to the date of filing of that application dated 18.11.2022. It appears that the G.D. entry was made by the complainant on 27.11.2022 and the statement of opposite party no. 2 was also recorded on 1.12.2022 which appears to be afterthought and court below ought not to have relied upon those documents and ought not to have cancelled the bail order on the basis of the prayer made on behalf of the complainant.

In **Deepak Yadav Vs. State of U.P. reported in AIR ONLINE 2022 SC 768**, it was held that 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 trial. In the present context, the court below failed to consider that the complainant has failed to prima facie make out any case as to when and how such criminal intimidation took place and after filing such application under Section 437(5) of the Code, he became wiser and lodged diary on 27.11.2022 and made statement before police on 1.12.2022.

In **Himanshu Sharma Vs. State of Madhya Pradesh, reported in AIR ONLINE 2024 SC 110**, the Apex court has laid down the law, as and when the prayer for cancellation can be entertained by the court and one of such criteria is that the

accused has misused the liberty granted to him. In the present context, no allegation has also been leveled by the investigating agency but only a report submitted recording complaint's statement in term of court's order. Investigating agency have not alleged that the petitioners/accused have misused their liberty or that they have flouted any condition of bail or have interfered with the investigation process.

Under such circumstances, I find that the order impugned suffers from perversity and is not liable to be sustained.

In such view of the matter, CRR 4801 of 2022 is allowed. The order impugned dated 19th December, 2022 passed by the learned Additional Chief Judicial Magistrate, Kolkata in GR (NS) case no. 977 of 2022 is hereby set aside. However, this order will not preclude the complainant/opposite party to make similar prayer in future, if situation demands.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)