

10.09.2025  
Item No.10  
Court No.42  
AN

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

**CRM (M) 1054 of 2025**

In re: An Application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail corresponding Section 483(3) of the B.N.S.S. Act, 2023.  
-And-

**In the matter of : XXX**

... Petitioner

Mr. Amajit De

... for the Petitioner

Mr. P. K. Dutta, Additional P.P.  
Mr. Anindya Sundar Chatterjee

... for the State

Mr. Subrata Bhattachryya  
Mr. Indranuj Dutta

... for opposite party no.2

1. Affidavit-in-opposition filed on behalf of the opposite party no. 2 is taken on record.
2. This is an application for cancellation of bail granted to opposite party no.2 by the learned trial court vide order dated 16<sup>th</sup> June, 2025.
3. Learned counsel appearing for the petitioner submits that the learned trial court after noting the allegation made by the victim against this petitioner in her statement of causing rape upon her, proceeded to grant bail only on the ground that charge sheet has been submitted without considering such grave allegations, which is

perverse on the face of it. The allegation against the petitioner is of serious nature. A conviction in respect of offences alleged may lead to imprisonment for life. Due to such sexual intercourse, the victim became pregnant and the child in the womb had to be aborted. Referring to the decision of the Hon'ble Supreme Court in the case of ***Deepak Yadav versus State of Uttar Pradesh*** reported in ***(2022) 8 SCC 559***, he submits that where there is serious discrepancy found in the order of granting bail and such grant of bail is apparently whimsical, capricious and perverse in nature, the same should be cancelled since it caused prejudice to the interest of the victim. He seeks for cancellation of bail granted by the learned trial court vide order dated 16<sup>th</sup> June, 2025.

4. On the contrary, learned counsel for the opposite party no. 2 submits that upon consideration of the entire materials on record, learned trial court has granted bail. There are no such allegations of any misconduct on the part of the opposite party no. 2 after grant of bail. Therefore, the application for cancellation of bail is not at all sustainable in law and should be dismissed.
5. Mr. P. K. Dutta, learned Additional Public Prosecutor, representing the State submits that there is no such report of any post bail misconduct of the opposite party no. 2. He leaves the matter to the discretion of the Court.
6. Perused the case diary and the materials on record.

7. Upon going through the order impugned, it is found that the learned trial court while granting bail has recorded the specific allegations made by the victim against the petitioner of committing rape upon her and also giving the victim a chocolate to have the child aborted in the womb. It appears from the order of the learned trial court that since one of the accused is absconding and on filing of charge sheet, the bail has been granted. The victim in her statement before the Magistrate clearly implicates the petitioner of causing rape upon her and also asking to consume chocolate which will aid in abortion. The medical examination report of the victim shows complete abortion. Needless to state that there is no such consideration in the impugned order regarding the nature of allegation and gravity of the offence.

8. It is settled proposition of law that while considering an application for bail, the following factors are to be borne in mind:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;

- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced: and
- (viii) danger of justice being thwarted by grant of bail.

9. The Hon'ble Supreme Court in *Deepak Yadav* (*supra*) has observed and held as follows:

**“32.** *A two-Judge Bench of this Court in Dolat Ram v. State of Haryana laid down the grounds for cancellation of bail which are:*

*(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 in any manner;*

*(iv) possibility of the accused absconding;*

*(v) likelihood of/actual misuse of bail;*

*(vi) likelihood of the accused tampering with the evidence or threatening witnesses.*

**33.** *It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:*

**33.1.** *Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

**33.2.** *Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*

**33.3.** *Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

**33.4.** *Where bail has been granted on untenable grounds.*

**33.5.** *Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

**33.6.** *Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*

**33.7.** *When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”*

10. Bearing in mind the aforesaid proposition, since it is found from the order impugned that the learned trial court did not consider the nature of the allegations as levelled against opposite party no. 2 of his involvement in such offence and gravity of the offence, this Court is inclined to cancel the bail granted by the learned trial court vide order dated 16<sup>th</sup> June, 2025.
11. Accordingly, the bail granted by the learned trial court to opposite party no.2 vide order dated 16<sup>th</sup> June, 2025 stands cancelled.
12. Opposite party no. 2 is directed to surrender before the learned trial court within a week from date, failing which the learned trial court shall take coercive measures against the opposite party no. 2 for his arrest and commitment to custody.
13. Accordingly, **CRM(M) 1054 of 2025** stands disposed of.
14. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
15. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**