

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 312 of 2022

**State of West Bengal
Vs.
Subrata Mondal & Anr.
With
CRR 2307 of 2021
Khokan Mondal
Vs.
State of West Bengal & Ors.**

For the Petitioner/State : Mr. Bitasok Banerjee

For the Opposite Party No.1 : Mr. Dipayan Kundu

For the State in CRR 2307 of 2021 : Mr. Rana Mukherjee
Ms. Sujata Das

Heard on : 21.02.2025

Judgment on : 27.02.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. These two applications under section 482 read with section 401 of the Code of Criminal Procedure (in short Cr.P.C) have been preferred by the State of West Bengal and the *de facto* complainant respective against self-same order dated 29th October, 2021 passed by Additional Chief Judicial Magistrate Alipore, in BGR Case no. 4130 of 2021. By the order impugned

learned Magistrate was pleased to grant bail in favour of the opposite parties herein, subject to furnishing bail bond.

2. It discloses from the FIR that Jiban Tala P.S. Case No. 335 of 2021 dated 12.10.2021 under sections 420/465/468/471/406/467/409/120B was started against the present two petitioners, alleging that with the help of certain forged documents, the petitioners have recorded their names in the Record of Rights. The crux of the allegation is that the petitioners have forged deeds and thereby succeeded in making illegal gain.

3. However, learned Magistrate disposed of the petitioners' bail application filed under section 437 of the Cr.P.C. with the following observation:-

"Bail petition is moved Perused the case record and all other materials on record. I find that the allegation is civil in nature and no such allegation against the accused for which his detention is required. Hence the accused may find bail of Rs. 1000/- each with one surety of like amount in default to judicial custody till 06.04.2022."

4. Being aggrieved by that order learned public prosecutor on behalf of the State argued that the allegation is serious in nature and considering gravity and merit of the case, the control of investigation has been assumed by Enforcement Branch. Learned Magistrate surprisingly granted confirmed bail on direct surrender before the court below, with an erroneous finding that the matter is civil in nature and that the detention of the present petitioners are not required for the purpose of investigation. He further contended that the order of bail was passed without notifying the investigating agency and without giving an opportunity for hearing to the learned Public Prosecutor and without appreciating that custodial

interrogation of the opposite parties are absolutely necessary to unearth the truth for the sake of natural justice.

5. Mr. Banerjee on behalf of the State further argued that this is not an application simpliciter asking for cancellation of bail on post bail conduct, rather the inherent power of the court has been sought to be invoked herein for judicial review of the order under challenge and propriety in passing such order on the ground mentioned in the main Application. In this context the relied upon judgement reported in **(2020) 2 SCC 118 (Mahipal Vs. Rajesh Kumar @ Polia and Another)**, **(2022) 2 SCC 66 (State of Maharashtra Vs. Pankaj Jagshi Gangar)** and **(2001) 6 SCC 338 (Puran Vs. Rambilas and Another)** .

6. He further contended that the learned Magistrate in one hand after meticulous examination of the petition of complaint had directed the police to start investigation, since it discloses cognizable offence and on the other hand the same Magistrate at the time of hearing of bail application held, without assigning any cogent reason, that the dispute is civil in nature. Not only that he released the accused persons on bail without hearing Public Prosecutor, when the accused persons are booked under section 420/465/468/471/406/467/409/120B of the IPC. Accordingly learned Counsel appearing on behalf of the State in C.R.R 312 of 2012 submits that the order impugned, is perverse illegal and has been passed going beyond his jurisdiction, when prima facie, it is apparent that the entire mischief and misappropriation have been done on the basis of manufactured and/or non-existing documents, at the behest of the

accused persons/opposite parties and for which custodial interrogation is badly needed in the present context to unearth the truth.

7. It is no doubt true that section 482 of the Code starts with the words “*nothing in this Code*” which indicates that the inherent jurisdiction of the High Court under section 482 of the Code can be exercised even when there is bar under section 397 or some other provisions of the Criminal Procedure Code. However the main question which falls for determination in the present Application is when there is specific remedy provided in the statute, whether inherent power under section 482 can be resorted to.

8. Before going to further details it needs to be mentioned that the court below passed the impugned order invoking his jurisdiction under section 437 of the Cr.P.C. It would be appropriate in this context to reproduce section 437(5) of the Code which reads as follows:-

“Section 437(5):

Any Court which has released a person on bail under sub section (1) or Sub-Section (2) may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.”

9. From the aforesaid provision it is quite clear that the Magistrate who has granted bail under sub section (1) or sub section (2) of section 437, also has the power to direct that such person be arrested and commit him to custody, if he considers necessary, so to do.

10. In **Satya Narayn Sharma Vs. State of Rajasthan** reported in **(2001) 8 SCC 607** Supreme court held in para 15 as follows:-

“15. There is another reason also why the submission that Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words “Nothing in this Code”. Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent

jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10] , Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Indra Sawhney v. Union of India [(2000) 1 SCC 168 : 2000 SCC (L&S) 1] the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.” (emphasis added)

11. The order of granting bail is certainly an interlocutory order as held in **Amar Nath and Others Vs. State of Haryana and Another** reported in **(1977) 4 SCC 137** and if the order assailed is purely of an interlocutory character, which could be corrected, if required, in exercise of power given to the Magistrate under section 437 (5) of the Code, the High Court is not supposed to exercise its inherent power under section 482 of Cr.P.C. It is settled law that inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice or where there is no other provision in the code to assail the order. But the inherent power under section 482 is not to be resorted to if there is specific provision in the Code for redress of the grievance of the aggrieved party/State. In this context reliance has also been placed upon ratio laid down in **Mohit @ Sonu and Another Vs. State of Uttar Pradesh and Another, (2013) 7 SCC 789**.

12. Therefore the inherent power under section 482 of the Code is to be used in the situations mentioned in the section and it should be exercised rarely in exceptional cases. The authority given under section 482 Cr.P.C is considered extraordinary because it allows the court to act decisively, when justice is at stake but in the name of extraordinary power, the High Court is not supposed to assume the jurisdiction, even in the matters to which the legislature has assigned power to the Magistrate under the Code. Power

under section 482 is not the extension of powers conferred upon a litigant under a specified statute. If such sort of practice is approved, it would encourage forum shopping by the aggrieved, which is wholly impermissible. The authorities cited and relied in this context by the petitioner as above are factually distinguishable and the observations therein were made in the context High Court and Session Court's power under section 439(2) of Cr.P.C, which is not the issue in the present context.

13. In such view of the matter the petitioner will have no cause to prejudice, if they are being given liberty to approach before the jurisdictional magistrate under the statute, with the self same prayer.

14. In such view of the matter **CRR 312 of 2022** and **CRR 2307 of 2021** are dismissed.

15. However, this dismissal order will not preclude the petitioner to make similar prayer under the statute before the Court below to agitate all his points taken herein and in the event of making such prayer by the petitioner herein, the court below will dispose of such prayer in accordance with law, after giving opportunity to both the parties to contest and without being influenced by any observation made herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)