

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

CRA (DB) 260 of 2024

Sujoy @ Sujan Mondal & Others

Vs.

The National Investigating Agency & Anr.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Ayan Bhattacharya, Sr. Adv
Ms. Diksha Ghosh

For the State Mr. Arun Kr. Maiti (Mohanty),
Mr. Bhaskar Prosad Banerjee,
Mr. Debasish Tandan
Mr. Debayan Sen

For the Defacto complainant Mr. Sourav Chatterjee, Sr. Adv,
Mr. Soumya Nag

CAV On: 11.02.2025

Judgment On: 12.03.2025

Apurba Sinha Ray, J. :-

1. The instant criminal appeal relates to an order dated 21.08.2024 passed by the Learned Chief Judge, City Sessions Court, Calcutta in connection with NIA Case No. 01 of 2024 (RC/04/2024/NIA/DLI) arising out of Moyna Police Station Case No. 128 of 2023 dated 02.05.2023 by

which the statutory bail previously granted by the Learned Judge, Special Court, Tamluk was cancelled and the appellants were taken into custody by the Learned Chief Judge, City Sessions Court, Calcutta being the NIA Court.

2. The relevant factual events may be narrated hereunder:-

i. On 02.05.2023 a suo moto complaint was lodged by the Officer-in-Charge of Moyna Police Station regarding the murder of one Bijoy Bhunia. The High Court passed an order dated 03.05.2023 directing transfer of the body of the deceased to the Command Hospital, Kolkata for conducting a second post mortem.

ii. The appellant no. 3, Milan Bhowmik was arrested on 04.05.2023 while the other appellants viz., Sujoy Mondal, Nandan Mondal and Subrata Mondal were arrested on 06.05.2023.

iii. The appellant no. 3 was enlarged on statutory default bail on 02.08.2023 whereas the other appellants were enlarged on statutory bail on 05.08.2023, although on 05.08.2023 at about 5:10 P.M. the chargesheet being No. 183 of 2023 dated 04.08.2023 against the aforesaid four appellants along with others was submitted.

iv. By order dated 05.04.2024 this Court directed the NIA to take over the case since it was observed, inter alia, that the chargesheet was submitted

under suspicious circumstances at the fag end of the day after granting bail to the prime accused persons (appellants 1, 2 and 4 herein).

v. On 16.04.2024 NIA re-registered an FIR.

vi. By an order dated 18.04.2024 the Learned Chief Judge, City Sessions Court, Calcutta directed Moyna Police Station to handover the case along with all the accused persons to NIA. On 04.03.2024 one of the co-accused namely, Buddhadeb Mondal was enlarged on interim bail in CRM (DB) No. 4769 of 2023.

vii. On 17.05.2024 the appellants herein failed to appear before the Learned Chief Judge, City Sessions Court, Calcutta and as a result the NIA Court directed the Learned Special Court Tamluk, Purba Medinipur to instruct the sureties for ensuring the appearance of the appellants on 22.05.2024. After appearance before the NIA Court, the appellants prayed for allowing them to remain on the same bail bond as granted by the Learned Judge, Special Court, Tamluk.

viii. On 21.08.2024 the Learned Chief Judge, City Sessions Court, Calcutta cum NIA Court rejected the prayers of the appellants and the bail granted by the Learned Judge, Special Court Tamluk, Purba Medinipur was cancelled.

3. The contention of the Learned Counsel of the appellants herein is that no application for cancellation of bail was filed and at the time of re-

registration of the FIR by the NIA, Charges under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Explosive Substances Act, 1908 were added. It is also contended that as per rule 125 of Calcutta High Court Criminal (Subordinate Courts) Rules 1985, they are entitled to file application seeking permission from the court to remain on the same bail bond as directed by the Learned Judge, Special Court, Tamluk, Purba Medinipur before the NIA Court since both the courts have equal jurisdiction. There is no allegation of violation of conditions of bail nor any objection against the application dated 22.05.2024 was filed by the prosecution. The bail order of the Learned Judge, Special Court, Tamluk, Purba Medinipur was permanent in nature and not temporary or interim. The appellants were not present before the City Sessions Court as they did not have knowledge of change of court or change of investigating agency. Moreover, they were not parties to the writ proceedings before the High Court at Calcutta.

4. The NIA, on the other hand, contends that the NIA Court had given opportunities /notices to the parties before not allowing their prayer for continuation on the same bail bond. Sufficient opportunities were given and ultimately on 21.08.2024 the NIA Court took the appellants into custody, after rejecting their prayer for continuation on the same bail bond. What the NIA Court did was in accordance with law. The appellants conspired with other associates with common intention and thereafter assembled near the victim's house with arms, explosives and other deadly weapons and attacked

the victim for causing hurt and thereafter abducted and murdered him. When his wife tried to resist, she was also physically assaulted and her modesty was outraged.

5. The learned counsel for the NIA has referred to the case of **Pradeep Ram Vs. State of Jharkhand and Anr.** reported in **(2019) 17 SCC 326** in support of his contention that the court in exercise of power under Section 437(5) as well as section 439(2) of Cr.P.C. can direct the person who has already been granted bail to be arrested and commit him to custody on addition of grave cognizable offence.

6. He has also relied upon judicial decisions reported in **Ajwar Vs. Waseem and Anr.** reported in **(2024) 10 SCC 768** and **Sushila Aggarwal and Anr. Vs. State (NCT of Delhi)** reported in **(2020) 5 SCC 1** in support of his contention.

7. The learned counsel appearing for the respondent no. 2 has submitted that the order dated 05.04.2024 was challenged by the State of West Bengal before the Hon'ble Division Bench in MAT 763 of 2024 and by order dated 16.05.2024 the Hon'ble Division Bench found that there was no error in the order. The learned counsel has relied upon the judicial decision reported in **(2023) 4 SCC 253 (State through CBI Vs. T Gangi Reddy @ Yerra Gangi Reddy)** holding that subsequent filing of chargesheet after granting default bail cannot be the ground for cancellation of bail of the accused who is released on bail. After completion of investigation if the case is strong and it

is found that the accused committed cognizable and non-bailable offences then bail can be cancelled on merits. Default bail cannot be cancelled on mere filing of the chargesheet. However, there is no bar to the effect that once a person is released on default bail his bail cannot be cancelled on merits. His bail can be cancelled on other general grounds like tampering with evidence/witnesses, non co-operating with the investigating agency or trial.

8. We have considered the rival contentions of the parties.

9. We have carefully read the order dated 21.08.2024 and have also taken into consideration other materials on record. Needless to mention, the judicial hours of a court is usually from 10:00 AM to 5:00 PM. The statutory period for completion of investigation in respect of certain offences including the offences for which the instant case was started, is 90 days. On the 90th day of their arrest the appellant nos. 1, 2 and 4 filed bail applications praying for statutory bail on the ground that charge sheet was not filed within 90 days. The 90 days statutory period ends with the expiry of the court hours of the said 90th day from the date of arrest of the concerned person. In our case, it is found that chargesheet was filed after court hours on the 90th day and therefore granting of statutory bail in respect of the appellant nos. 1, 2 and 4 cannot be questioned. It is not expected that such statutory period will extend up to 12 midnight of the 90th day of the statutory period. Therefore, as the chargesheet was not submitted within the court hours of the last day of the statutory period, it is difficult to raise any

question regarding the legality of the bail order which was passed within the court hours of the day ending the statutory period.

10. Astonishingly, the order dated 21.08.2024, as aforesaid, did not consider the statutory default bail granted to the appellant no. 3, Milan Bhowmik on 02.08.2023. He was arrested on 04.05.2023 and he was granted default bail on expiry of statutory period on 02.08.2023 by the Learned Judge, Special Court, Tamluk. Therefore, so far as the appellant no. 3 is concerned it appears that the relevant chargesheet dated 05.08.2023 was filed after 3 days of expiry of his statutory period. In other words, the chargesheet in respect of the appellant no. 3 was filed on the 93rd day of his arrest. There was no allegation from any corner that the appellant no. 3 was in anyway responsible for delayed submission of the chargesheet. It appears that this vital fact was not considered by the Learned Chief Judge, City Sessions Court, Calcutta in passing the order dated 21.08.2024, when the interim bail granted on 02.08.2023 to the appellant no. 3 was also revoked along with the appellant nos. 1, 2 & 4 who were enlarged on default bail on 05.08.2023.

11. The Learned Chief Judge has taken a cue from the order dated 05.04.2024 of the Hon'ble High Court at Calcutta in passing the impugned order dated 21.08.2024 and has commented:-

“..... and from the order of Hon'ble Court
passed on 05.04.2024 in WPA No. 10909 of

2023 it is evident that this four accused/petitioners ensured statutory bail by submitting chargesheet after the statutory period under suspicious circumstances despite an order of the Hon'ble Court and the infractions could not be explained before the Hon'ble Court satisfactorily by the State Agency."

12. On the contrary, the relevant observation of the Hon'ble High Court, Calcutta in the order dated 05.04.2024 is somewhat otherwise. The Hon'ble Court observed:-

".....Under suspicious circumstances, charge sheet was submitted at the fag end of a day allegedly to ensure statutory bail for the prime accused."

13. It appears that the High Court did not specifically state that the accused were responsible in obtaining the bail by arranging submission of chargesheet beyond statutory period. The observation of the High Court relates to the incompetence as well as partisan activity on the part of the State agency. However, the Learned Trial Court has failed to interpret such observations in proper perspective. The High Court's such observation was certainly against the State agency and it is very much apparent that the

High Court did not mention any active role of the accused persons who were not parties to the said proceedings.

14. Another vital discrepancy in the order dated 21.08.2024 is that the Learned Trial Judge has considered the order dated 26.07.2024 passed in CRM (DB) 4769 of 2023 by the High Court as applicable to all the appellants. The record shows that the CRM (DB) 4769 of 2023 was filed by another accused namely, Buddhadeb Mondal and he was enlarged on interim bail and subsequently by order dated 26.07.2024 the said petitioner's prayer was directed to be considered and decided by the Learned Trial Court. The High Court by the said order extended the interim order of bail of the said accused, Buddhadeb Mondal till the end of August, 2024 and requested the Special Court *"to decide the bail application within the period of August, 2024 treating the said bail application as a bail application before the Special Court. The Special Court shall decide the bail application on its merits after affording opportunity of hearing to all concerned parties."* Needless to mention that the said direction is applicable only to the accused Buddhadeb Mondal's prayer and there was no such direction upon the Learned Special Court in respect of the appellant nos. 1, 2 and 4 of this appeal. But in cancelling the interim bail of the above appellants the Learned Trial Judge has based his reasoning on the order dated 26.07.2024 in CRM (DB) 4769 of 2023 without applying his mind that the same is applicable only to the accused Buddhadeb Mondal and not against the

present appellants. It goes to show the non-application of mind by the Learned Trial Judge in passing the order dated 21.08.2024.

15. The Learned Trial Judge has also mentioned that he did not find any substance in the submission of the learned counsel of the accused/petitioners that “*the statutory bail granted by the Judge, Special Court at Tamluk cannot be cancelled even if the same suffers from grave infirmity.*” Such reasoning in the order dated 21.08.2024 shows that the Learned Chief Judge, City Sessions Court, Calcutta has acted as an appellate forum over the order of interim bail granted by the Learned Judge, Special Court at Tamluk, which, in our opinion, he having the concurrent power with the Learned Judge, Special Court, Tamluk, cannot do so.

16. The order dated 21.08.2024 shows that the Learned Trial Judge did not reject the prayer for allowing them to continue on the same bail bond on the ground of addition of graver charges of offences after the investigation being taken over by the NIA. On the contrary, The Learned Trial Judge weighed the legality and validity of the order of default bail by contending that there were serious allegations against the accused persons and the said order suffers from grave infirmity. Not a single word has been said by the Learned Chief Judge, City Sessions Court that he rejected or cancelled the order of interim bail as there was addition of graver charges or as the accused did not pray for bail for the offences under graver sections. Therefore, the Learned Trial Judge did not consider the judicial decisions of **Pradeep Ram (supra)** in this regard. Had the Learned Trial Judge cancelled

the interim bail of the appellants on the ground that graver charges having been leveled against them, no bail application was filed for such offences, the matter would have been otherwise.

17. It is needless to mention that no cancellation prayer was made from the side of the prosecution/investigating agency in this regard. No submission from NIA was recorded in the said order dated 21.08.2024 that the bail prayer of the appellants should have been cancelled as graver sections have been added after the investigation was being taken over by the NIA.

18. Needless to mention the appellants were not aware of the addition of graver sections since that was done, not in their presence. There was no notice to the appellants that as the graver sections have been added to the case, their bail applications for continuation on the same bail bond may be rejected. Furthermore, there was not an iota of material showing that the petitioners misused their liberty by intimidating witnesses, non-co-operating with the investigating agency or destroying evidence etc. Therefore, as there was no material showing that the petitioners misused the liberty granted to them, it was very much unjustified for not allowing their prayer to remain on the same bail bond, particularly, when there was no prayer for cancellation of bail from the side of the investigating agency. Therefore, we find that the order dated 21.08.2024 passed by the Learned Chief Judge, City Sessions Court, Calcutta in connection with NIA Case No. 01 of 2024 (RC/04/2024/NIA/DLI) arising out of Moyna Police Station Case No. 128 of

2023 dated 02.05.2023 is not sustainable in the eye of law. Accordingly, the order dated 21.08.2024 is hereby set aside. The appellants may find bail of Rs. 50,000/- each with two sureties Rs. 25,000/- out of which one must be local subject to the satisfaction of the Learned Chief Judge, City Sessions Court, Calcutta, and on further conditions that they shall not leave the jurisdiction of the Moyna Police Station excepting for the purpose of court proceedings and shall report to the Officer-in-Charge of the Moyna Police Station once in every week until further orders. They shall also intimate their current local address to the I.O. and the Learned Trial Court.

19. The appellants shall appear before the Trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever. In the event, the petitioners fail to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioners bail in accordance with law without further reference to this court.

20. Accordingly, the bail application is disposed of.

21. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)