

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 168 of 2025

Karimul Mia

-Vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Amales Ray, Sr. Adv.,
Mr. Nigam Mittal,
Ms. Parna Mitra.

For the State : Mr. Nilay Chakraborty, Ld. APP,
Mr. Sourav Ganguly.

For the Opposite Party No. 2 : Mr. Arijit Ghosh.

Hearing concluded on : 30.04.2025

Judgment on : 02.05.2025

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being Order No. 40 dated 03.04.2025 passed by the Learned Judge, Special Court under S.C. & S.T. Act, Cooch Behar -cum the Learned the Additional Sessions Judge, 1st Court, (NDPS), Cooch Behar in Special Court Case No. 05 of 2023 wherein and whereby the prayer of the Investigating Officer dated 13.08.2024 for cancellation of the bail of the accused Karimul Mia, the petitioner, granted earlier by

the learned Court on 29.04.2024 was cancelled and the petitioner has been taken into custody and remanded to jail custody till 16.04.2025.

2. It appears from the order under challenge that the Court which passed the order under challenge held that there was non-compliance of the condition of bail, one of which was cooperating with the investigation and the accused having not complied with the notice under Section 91 of the Cr.P.C. issued by the Investigating Officer.
3. It is further submitted that in spite of directions, also by the Court, the accused in the present case did not produce the document which was required for the purpose of investigation and for such non-compliance, which hampered investigation, the prayer for cancellation of bail was made.
4. It was the case of the Investigating Officer that the original deed was necessary for investigation in the present case as there was an allegation of forgery and as such the same was required for sending it for examination by handwriting expert.
5. It is further submitted that such verification could not be done with a certified copy and the original was required for such purpose of proper investigation.
6. It appears that on 21.03.2025 the accused/petitioner herein had intimated the Court in writing that the alleged deed is not with him. The Court held that though the intimation was sent by the accused, there was no explanation as to why the accused was silent for 6 months after receiving the notice under Section 91 of Cr.P.C. sent by the I.O.

7. It further appears that the office of the ADSR, Cooch Behar intimated in writing on 23.04.2024, that the original deed was delivered to the petitioner herein on 30.03.2016 and as such the accused was avoiding his legal liability.
8. The learned Judge then proceeded to cancel the bail of the petitioner herein on the said ground of non-compliance of the notice issued under Section 91 of the Cr.P.C. by the I.O. and allowed the prayer of the I.O. praying for cancellation of bail.
9. Learned counsel for the petitioner has relied upon the following judgments:-
 - i. Selvi & Ors. Vs State of Karnataka, (2010) 7 SCC 263, (Para 14).**
 - ii. V.S. Kuttan Pillai vs Ramakrishnan & Anr., (1980) 1 SCC 264, (Para 10).**
 - iii. State of Gujarat vs Shyamlal Mohanlal Choksi & Anr., 1964 SCC OnLine SC 41, (Para 41).**
10. Learned counsel for the prosecution has relied upon the following judgments:-
 - i. State through CBI vs T. Gangi Reddy alias Yerra Gangi Reddy, (2023) 4 SCC 253.**

The Said judgment relates to the grounds on which default bail can be cancelled. The present case does not relate to grant of default bail.

ii. ***Himanshu Sharma vs State of Madhya Pradesh, in Criminal Appeal No(s). of 2024 (arising out of SLP (Crl.) No(s). 786 of 2024), decided on 20th February, 2024.***

11. It appears on hearing the learned counsel for the parties, the order under challenge and the judgment of the Supreme Court in **V.S. Kuttan Pillai vs Ramakrishnan & Anr., (Supra)** that the **notice** in the present case issued **under Section 91 of the Cr.P.C. to the petitioner/accused** herein calling upon him to produce the document **is not in accordance with law**, as it has been clearly decided by the Supreme Court that *“a summon to produce a thing or document as contemplated by Section 91(1) cannot be issued to a **person accused** of an offence calling upon him to produce document or thing considered necessary or desirable for the purpose of a investigation procedure”*.
12. It was further held in **V.S. Kuttan Pillai vs Ramakrishnan & Anr., (Supra)** that :-

“8. *The matter again came up before a Constitution Bench of this Court in Shyamlal Mohanlal v. State of Gujarat [AIR 1965 SC 1251 : (1965) 2 SCR 457 : (1965) 2 Cr LJ 256] . In that case appellant Shyamlal Mohanlal was a licensed moneylender and according to the provisions of the relevant Money Lending Act and Rules he was under an obligation to maintain books. He was prosecuted for failing to maintain books in accordance with the provisions of the Act and the Rules. The police prosecutor in charge of the case on behalf of the prosecution presented an application requesting the Court to order the appellant Shyamlal Mohanlal to produce daily book and ledger for a certain year. Presumably it was a request to issue summons as contemplated by Section 94 of the old Code. The learned Magistrate rejected the request on the ground that in so doing the guarantee of immunity from self-incrimination would be violated. The matter ultimately came to this Court and the question that was put in the*

forefront before the Court was whether the expression “person” in Section 94(1) which is the same as Section 91(1) of the new Code, comprehends within its sweep a person accused of an offence and if it does, whether an issue of summons to produce a document in his possession or power would violate the immunity against self-incrimination guaranteed by Article 20(3). **The majority opinion handed down by Sikri, J. ruled that Section 94(1) upon its true construction does not apply to an accused person.** While recording this opinion there is no reference to the decision of the larger Bench in *Kathi Kalu Oghad* case [AIR 1961 SC 1808 : (1962) 3 SCR 10 : (1961) Cr LJ 856] . Shah, J. in his dissenting judgment referred to the observation that the accused may have documentary evidence in his possession which may throw some light on the controversy and if it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon to produce it. Proceeding further it was observed that Article 20(3) would be no bar to the summons being issued to a person accused of an offence to produce a thing or document except in the circumstance hereinabove mentioned. Whatever that may be, **it is indisputable that according to the majority opinion the expression “person” in Section 91(1), (new Code) does not take within its sweep a person accused of an offence which would mean that a summon issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination.”**

13. The prosecution in the present case has based its argument on the ground that there has been non-compliance of condition imposed by the Court while granting bail to the petitioner, as the petitioner/accused herein has admittedly not complied with the notice issued by the Investigating Officer under Section 91 of the Cr.P.C. for production of a

document related to the case and which could possibly incriminate the petitioner/accused herein.

14. **Non-compliance of a notice which has been issued, being not in accordance with law, cannot be taken as non-compliance.** More so, when the accused/petitioner is protected under the law. Such act of the petitioner/accused who has availed of the protection available to him under the law, cannot be accused of violation of condition of bail, as the notice issued under Section 91 of Cr.P.C. to the petitioner/accused herein, is not applicable to an accused/petitioner. ***V.S. Kuttan Pillai vs Ramakrishnan & Anr., (Supra)***
15. Learned counsel for the petitioner has fairly submitted that relief of the Investigating Agency lies under Section 93(1)(c) of the Cr.P.C. and Section 96(1) of the Old Act.
16. Accordingly in view of the said observation, the order dated 03.04.2025 passed by learned Judge, Special Court under S.C. & S.T. Act, Cooch Behar cum the learned Additional Sessions Judge, 1st Court, (NDPS), Cooch Behar, cancelling the bail of the accused/petitioner **Karimul Mia** being not in accordance with law **is set aside.**
17. **The accused Karimul Mia be released on the same bail at once.**
18. **CRR 168 of 2025 stands disposed of.**
19. All connected Applications, if any, stand disposed of.
20. Interim order, if any, stands vacated.
21. **Copy of this judgment be sent to the learned Trial Court for necessary/urgent compliance.**

22. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)