

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri**

**19.06.2025.
13.
as**

C.R.M. (M) 52 of 2025

In Re: An application under Section 439(2) read with Section 482 of the Criminal Procedure Code corresponding to Section 483(2) read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for cancellation of bail.

In the matter of : ***Central Bureau of Investigation.***
... Petitioner.

Mr. Sudipto Kumar Mazumdar, Ld. DSGI,
Mr. Ajoy Kr. Singhanian.
...for the Petitioner.

Mr. Subhasish Misra,
Mr. Satyajit Paul,
Ms. Shreya Sarkar.
...for the Opp. Party.

1. This application has been preferred under Section 439(2) of the Criminal Procedure Code (in short Cr. P. C.) corresponding to Section 483(2) read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023(in short BNSS) for cancellation of bail.
2. By filing the present application, the petitioner has questioned the legality of the order passed by the learned Additional Sessions Judge, Dinhata, Cooch Behar, in Sessions Case No. 177 of 2022, whereby bail was granted to the opposite party.
3. Mr. Mazumdar, learned DSGI appearing for the petitioner/Central Bureau of Investigation (hereinafter referred to as "CBI"), submits that in the present case, the record was 'put up' before the Court on 17.01.2025 based on an application filed by the opposite party, without serving any copy of the 'put up' petition to

the petitioner. He further submits that no opportunity was afforded to the petitioner either to oppose the prayer for bail or to produce the case diary at the time of the hearing. The learned Court, without perusing the case diary and in the absence of the petitioner's representative, granted bail in favour of the opposite party. He contends that granting bail in such a manner has resulted in a miscarriage of justice. Accordingly, he prays that the order granting bail be set aside on this ground.

4. Mr. Mazumdar relies on an unreported judgment passed by a Co-ordinate Bench in CRR No. 4580 of 2024 and contends that in a similar circumstance, where no notice was given to the CBI at the time of hearing the bail petition, the Co-ordinate Bench set aside the order granting bail.

5. He also relied on the decision, reported in (2022) 8 SCC 559 (Deepak Yadav v. State of Uttar Pradesh & Anr.) for the proposition that cancellation of bail is not restricted solely to the occurrence of supervening circumstances. The Hon'ble Court possesses inherent powers and discretion to cancel bail on other valid grounds as well. He submits that if bail was granted on untenable grounds or if the order suffers from serious discrepancies causing prejudice to the cause of justice, such bail can be cancelled. He further contends that the order granting bail in the present case is manifestly whimsical, capricious, and perverse, and therefore warrants cancellation.

6. In rebuttal, Mr. Misra, learned Advocate appearing for the opposite party, submits that the case was investigated by the CBI, which is represented before the learned Court below by the Special

Public Prosecutor, Mr. Kousik Bhadra, who does not have an office or chamber within the vicinity of the Court premises at Dinhata. Consequently, despite their best efforts, the opposite party was unable to serve the 'put up' petition on Mr. Bhadra. As the opposite party was in detention, he personally presented the 'put up' petition. Considering that the opposite party's personal liberty was at stake, the learned Court proceeded to hear the application and, being satisfied that the opposite party had made out a strong case in his favour, granted bail. Additionally, it is submitted that the opposite party is a septuagenarian and is currently suffering from various age-related ailments.

7. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

8. Needless to emphasize, cancellation of bail, which results in the deprivation of liberty already granted to the opposite party, is a serious and harsh order. Therefore, the Court must exercise caution and circumspection when passing any order either setting aside the bail or cancelling it. However, a bail order can be set aside by a superior Court if it is established that the bail was obtained by the petitioner through gross misrepresentation of facts, by misleading the Court, indulging in fraud, or by bypassing the prescribed procedure of law.

9. Record reveals that on 15.01.2025, the case was taken up and dates were fixed for the examination of certain witnesses cited in the charge-sheet, scheduled from 24.03.2025 to 26.03.2025. However, just two days later, on 17.01.2025, the case record was

‘put up’ based on an application filed by the opposite party, and the hearing of the bail petition was fixed for 21.01.2025. The order does not indicate that any notice was served upon the learned Advocate representing the CBI before the Court, nor is there any notice having been given to the CBI itself. Consequently, the petitioner-CBI was not afforded an opportunity to oppose the prayer for bail or to be heard at the time of the bail hearing. Furthermore, the order granting bail does not reflect that the case diary was consulted prior to deciding the bail application.

10. On 17.06.2025, when the application for cancellation of bail was last taken up for hearing, Mr. Misra, learned Advocate appearing for the opposite party, was afforded an opportunity to produce any documents or materials demonstrating that the ‘put up’ petition was served upon Mr. Bhadra, learned Special Public Prosecutor for the petitioner, or was served directly upon the CBI.

11. It must be borne in mind that bail is not to be granted as a matter of course or merely upon request. While deciding an application for bail, the Court must consider the relevant materials and factors, and follow the principles laid down by the Hon’ble Supreme Court in a catena of judgments on the subject. The Court, whether granting or refusing bail, is required to assign reasons for its decision, although it is not expected to provide detailed reasons addressing the merits of the case.

12. Therefore, considering the manner in which the record was ‘put up’ and the bail was granted to the opposite party without

perusal of the case diary and other relevant materials, and without affording the petitioner-CBI any opportunity of being heard, this Court is of the view that the order granting bail in favour of the opposite party has resulted in a miscarriage of justice.

13. Accordingly, the order dated 21.01.2025 passed by the learned Additional Sessions Judge, Dinhata, in Sessions Case No. 177 of 2022, granting bail to the opposite party, is hereby set aside. The learned Additional Sessions Judge, Dinhata, is directed to pass necessary orders so that the opposite party is taken into custody forthwith.

14. At this stage, Mr. Misra, learned Advocate, submits that the opposite party undertakes to surrender voluntarily before the learned Court below within one week from the date hereof. He further submits that leave may be granted to the petitioner to move an application for bail. Since such liberty is always available to the petitioner, no further order is required on this issue.

15. Needless to state that if the opposite party does not surrender within the time specified in the preceding paragraph, the learned Court shall take appropriate steps to ensure the compliance of this order in its letter and spirit.

16. With these observations, the application for cancellation of bail is disposed of.

(Partha Sarathi Chatterjee, J.)

