

16.02.2026

Sl. No.7.

D/L.

Mithun.

Ct.No.29.

CRR/2092/2025

Swarup Kumar Sarkar @ Tikli

Vs.

The State of West Bengal & Anr.

Mr. Soumyajit Das Mahapatra,
Mr. Soumya Basu Roy Chowdhuri,
Ms. Madhurai Sinha,
Ms. Upasana Banerjee,
Ms. Alo Ghosh

...for the petitioner

Mr. Rudradipta Nandy, Ld. APP.,
Mr. Bikram Mitra

...for the State

The petitioner herein is aggrieved with the orders dated 13.03.2025 and 05.04.2025 by which the Court below stayed the order of granting bail and cancelled the bail dated 12.03.2025, respectively.

It appears from record that the petitioner herein is an accused in connection with Sessions Case No.33 of 2025, presently pending before learned Additional District Judge, 1st Court, Balurghat.

It further appears that by an order No.2 dated 12.03.2025, the Court below granted bail to the petitioner. However, on the next date, a prayer was made on behalf of learned Additional Public Prosecutor-in-Charge for cancellation of the bail on the ground that the State was not properly represented by the duly appointed Public Prosecutor during hearing of the application for bail on 12.03.2025.

Upon hearing learned Court below by the impugned order dated 13.03.2025 was pleaded to stay the operation of the order granting bail dated 12.03.2025 till next date. Said stay was time to time extended and thereafter on 5th April, 2025, the Court below by the other impugned order held that the material fact was not brought before the Court on

12.03.2025 by the Advocate, who appeared as Additional Public Prosecutor to plead the case and that he was not authorised to appear in the case before the Court and also the fact that the seizure of relevant materials, Test Identification Parade of the seized materials as well as Forensic Report were not placed before the Court by him at the time of hearing which amounts to suppression of material facts and thereby he cancelled the bail order.

Having heard learned Counsel for the petitioner and the State and on perusal of the order granting bail dated 12.03.2025, it appears that the Court below recorded that learned Additional Public Prosecutor-in-Charge filed hazira on behalf of the State and he had heard both side. During hearing said Public Prosecutor-in-Charge argued that the case is based on circumstances and there was recovery of arm from the accused. However the Court below perused the Case Diary (C.D.) and materials on record and he observed that the accused was arrested from police compound and the allegation is while the accused was in police custody, one improvised firearm was seized from a public compound behind the house of the accused allegedly as shown by the accused. However, on perusal of the statement recorded under Section 161 of the Cr.P.C. and on being satisfied that the materials do not suggest about user of the improvised firearm in commission of the alleged offence, he was pleased to grant bail to the petitioner.

It is well settled that cancellation of bail can only be made by the same Court on the ground of accused's misconduct or new adverse facts having been disclosed after the grant of bail. Various authoritative judgments of the Apex Court would show that an order granting bail can only be set aside on the ground of being illegal or unjustified or perverse

by the Court superior to the Court which granted the bail and not by the same Court.

It is settled law that the order granting bail cannot be reviewed by the Court passing such order in view of bar created under Section 403 of BNSS in the absence of any express provision in BNSS for the same.

In the instant case the order granting bail passed by the Court below on 12.03.2025 clearly states that it was granted purely on merit and after perusing case diary and other materials on record and not on any other extraneous considerations and therefore he has finally disposed of the issue in consideration and there was no scope of review of such order nor he had any authority to grant stay upon such order, which conclusively decides the rights of the party. Even if it is taken for granted that the Advocate who represented the State at the time of bail hearing was not an authorised representative of the State, the Court below cannot have entertained the subsequent prayer for cancellation of such order by sitting in review of it's judgment, more so when such final order was passed on merit. The allegation of suppression of any document by the alleged unauthorised representative of the State does not have any leg to stand, since the order granting bail clearly demonstrates that the Court perused case diary and materials on record before granting bail. Nearly one year has already been passed since passing of such final order granting bail by the Court below. Therefore, it is clear that the Court below has assigned an erroneous interpretation and thereby assumed expanded jurisdiction going beyond Section 403 of BNSS, in cancelling the bail granted to the petitioner.

In such view of the order, I find that the order impugned by which the Court below has stayed the order granting bail is something unheard

off and thereby the ground on which the bail granted vide order dated 12.03.2025 was cancelled is perverse.

In such view of the matter, CRR 2092 of 2025 is allowed.

The impugned order dated 13.03.2025 and subsequent orders in connection with the bail order in respect of the present petitioner are hereby set aside.

The learned Court below is directed to act in accordance with the order dated 12.03.2025, if the bail bond is furnished by the petitioner in terms of the said order.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)