

01.10.2015

C.R.M. 8191 of 2013
With
C.R.M. 12484 of 2013

In Re:- Application for cancellation of bail under Section
439 (2) of the Code of Criminal Procedure filed on
10.06.2013 and 09.09.2013.

Md. Raju
Petitioner

Vs.

Md. Tobrej & Ors.
Opposite Parties

Mr. Sekhar Basu,
Mr. Soubhik Mitter,
Mr. S. Dutta

..... For the Petitioner

Mr. Sudipta Moitra,
Mr. Subhasish Dasgupta

..... For the Accused/Opposite Parties

Mr. Manjit Singh, Ld. P. P.,
Mr. Pawan Kumar Gupta

..... For the State

Both the Criminal Miscellaneous Cases mentioned above are for cancellation of bail in connection with Howrah P.S. Case No. 86/ 2013, dated 05.02.2013 under Sections 147/ 148/ 149/ 302/ 506/ 34 I.P.C. (G.R. Case No. 767/2013). In C.R.M. No. 8191/ 2013 the four Opposite Parties/ Accused Persons were granted bail on 06.06.2013 and in C.R.M. No. 12484 of 2013, eight Opposite Parties/ Accused Persons were granted bail on 08.08.2013, both by the learned Sessions Judge, Howrah.

The facts common in both the cases are as follows:-

On 05.02.2013 one Md. Raju submitted a written complaint at Howrah P.S. and alleged therein that on that day at about 2 p.m. his brother Md. Arju was confined in front of his house by all the present Opposite Parties/ Accused Persons and that after such confinement the Opposite Parties/Accused Persons assaulted Md. Arju with deadly weapons like chopper, sword etc. at the leadership of the Opposite Parties/ Accused Persons Md. Selim and because of such assaults Md. Arju died on the spot. On the basis of the aforesaid written complaint Howrah P.S. case No. 86/ 2013 was registered against the present Opposite Parties/Accused persons. Sometime after initiation of the case the Opposite Parties/Accused Persons were arrested/surrendered before the Court of the Magistrate concerned.

The four Opposite Parties/ Accused Persons in C.R.M. No. 8191/ 2013 filed an application for anticipatory bail under Section 438 Cr.P.C. which was allowed by the learned District Judge, Howrah on 05.03.2013. Thereafter the present petitioner filed an application under Section 439 (2) Cr. P. C. on 11.03.2013 in this Court and thereby prayed for the cancellation of the anticipatory bail granted to those four Opposite Parties/ Accused Persons. The said application for cancellation of bail was allowed and the

anticipatory bail granted to the Opposite Parties/ Accused Persons was cancelled by this Court by an order dated 21.03.2013 in C.R.M. No. 3551/ 2013. Subsequently those Opposite Parties/Accused Persons surrendered and again prayed for regular bail before the learned Sessions Judge, Howrah and the learned Sessions Judge, Howrah by an order dated 06.06.2013 granted regular bail to the Opposite Parties/ Accused Persons in C.R.M. 8191/ 2013. The said order of the learned Sessions Judge, Howrah has been challenged with the prayer for cancellation of the bail, in C.R.M. No. 8191/ 2013.

The facts in C.R.M. No. 12484/2013 are a little different. The Opposite Parties/Accused Persons in this Criminal Miscellaneous Case surrendered before the Court of the Magistrate concerned on 15.06.2013 and prayed for bail under Section 439 of the Cr. P. C. and the said prayer for bail was rejected by the learned Sessions Judge, Howrah on 29.07.2013. The Opposite Parties/Accused Persons thereafter again prayed for bail under Section 439 Cr.P.C. on 01.08.2013. The said application for bail was heard by the learned Sessions Judge, Howrah on 08.08.2013 and the learned Sessions Judge, Howrah after hearing both the parties granted bail under Section 439 Cr.P.C. to the Opposite Parties/Accused Persons in this case. The defacto complainant, i.e., the petitioner before us

has challenged the said order of bail also with prayer for its cancellation under Section 439 (2) Cr.P.C.

Mr. Basu appearing for the petitioner in both the cases has argued that learned Sessions Judge, Howrah committed a gross error by granting regular bail under Section 439 Cr.P.C. to the four Opposite Parties/Accused Persons in C.R.M. No. 8191/ 2013 especially when earlier the anticipatory bail of those Opposite Parties/ Accused Persons had been cancelled by this Court for the reason that the grounds on the basis of which anticipatory bail was allowed by the learned Sessions Judge, Howrah were 'totally absurd, misconceived and perverse'. Mr. Basu has further argued that in C.R.M. No. 12484/ 2013 learned Sessions Judge, Howrah rejected the application of the Opposite Parties/Accused Persons for bail under Section 439 Cr.P.C. on 29.07.2013 on the ground that adequate materials were there against those Opposite Parties/Accused Persons. But within a very short period thereafter, i. e., on 08.08.2013 the same Sessions Judge, granted bail under Section 439 Cr.P.C. to all those Opposite Parties/Accused Persons without there being any remarkable change of facts or any situation. So, the order dated 08.08.2013 of the learned Sessions Judge, Howrah granting bail to the Opposite Parties/ Accused Persons in C.R.M. No. 12484/ 2013 also suffers from perversity and illegality.

Mr. Basu also submitted that the conduct of the accused persons after getting bail from the Court is relevant when considering whether such bail should be rejected or not. But such post conduct of the accused persons is not the only criteria for cancellation of the bail and bail once granted can be subsequently cancelled where it is found that the order granting the bail itself is illegal, perverse and shocking to the society at large, as it has happened in the present cases. To support his contentions Mr. Basu has cited the following decisions **2001 Supreme Court Cases (Cri) 1124 Puran- versus – Rambilas and Another, (2008) 2 Supreme Court Cases (Cri) 508 Dinesh M.N. (S.P.) – versus – State of Gujarat, (2011) 6 Supreme Court Cases 189 Prakash Madam and Others- versus – Ramprasad Vishwanath Gupta and Another, (2012) 12 Supreme Court Cases 180 Kanwar Singh Meena- versus – State of Rajasthan and Another and (2012) 3 Supreme Court Cases (Cri) 1172 Ash Mohammad – versus – Shiv Raj Singh Alias Lalla Babu and Another.**

Mr. Moitra, learned Advocate appearing for the Opposite Parties/ Accused Persons in both the cases has argued that the criteria and considerations for granting bail and cancellation of the bail are quite different. He further argued that the consideration for granting bail under Section 438 Cr. P.C. and under Section 439 Cr.P.C. are

also different. According to him bail is the rule while pre-trial detention is the exception and it should never be resorted to as a punitive measure and pre-trial detention in custody curtails the individual liberty guaranteed under Article 21 of the Constitution. The main thrust in the points raised by Mr. Moitra was that the bail once granted should be cancelled only in exceptional circumstances where such liberty given to the accused is abused, evidence collected or to be collected is tampered with and witnesses are influenced by illegal means or threatened or on any other similar circumstances. Mr. Moitra has further submitted that in the present case none of the Opposite Parties/ Accused Persons can be accused of any such mischievous acts and since all the Opposite Parties/ Accused Persons are enjoying bail and complying with all the conditions of the bail since 2013, the cancellation of the bail would be unfair and gross injustice to the Opposite Parties/ Accused Persons. Mr. Moitra, to substantiate his arguments has also cited the following decisions. **2003 SCC (Cri.) 2006 State of Gujarat- versus - Salim Bhai Abdul Gaffar Sks. & Ors., 2009 (8) SCC 325 Savitri Agarwal & Ors. - versus - State of Maharashtra & Anr., 2009 JT (SC) 91 Ashok Kumar - versus - State of U.P. & Anr., AIR 2010 SCC 91 Hazarilal Das - versus - State of West Bengal & Anr. and AIR 2012 SC 830 Sanbjay Chandra - versus - C.B.I.**

Mr. Singh, learned Public Prosecutor neither supported nor opposed the prayer of the petitioner for cancellation of the bail. However, after scrutinizing the materials in the C.D. he submitted that the witnesses examined have offered two different versions of the case. The witnesses related to the victim have supported the petitioner's case that the victim has been killed by the present Opposite Parties/ Accused Persons while according to some of the local persons the victim himself was an antisocial person and as such was unwanted in the locality due to which the victim was beaten to death by some local people. Mr. Singh, further informed that all the aforesaid witnesses were examined by the I.O. on 05.02.2013 and thereafter there was no substantive progress of the investigation up to the date when the bail prayers were considered and allowed by the learned Sessions Judge, Howrah. Mr. Singh has further informed that there is no material or report in the C.D. suggesting that any of the Opposite Parties/ Accused Persons has abused the liberty granted to them violating any condition of the bail.

It has been informed by the learned Advocates on both sides that the petitioner filed a Writ Petition being W.P. No. 14796 (W) 2013 making similar allegations and praying for the protection to the family members of the victim and the witnesses. And after hearing the parties the Writ Court disposed of the Writ Petition with a direction

upon the police authorities to maintain the peace and order in the locality.

We have considered the rival contentions.

There cannot be any dispute to the view that granting bail or its cancellation is always the subjective satisfaction of the Court, and the points for consideration are always different. Learned Advocates on both sides admitted that bail once granted can be cancelled if and when it is found that the accused after being released on bail abuses the liberties given to him. In other words, the conduct of the accused subsequent to the granting of bail is an important factor while considering any application for cancellation of bail.

In the case of **Puran- versus - Rambilas and Another 2001 Supreme Court Cases (Cri) 1124** it has been held that subsequent conduct of the accused is an important factor but not the only factor to be considered while considering cancellation of the bail and bail once granted can be cancelled also on the ground where such bail has been granted ignoring the important materials on record and also where it is found that the order granting bail is *per se* perverse. The same view has been reiterated in the case of 1. **(2008) 2 Supreme Court Cases (Cri) 508 Dinesh M.N. (S.P.) - versus - State of Gujarat, 2. (2011) 6 Supreme Court Cases 189 Prakash Kadam and Others- versus - Ramprasad Vishwanath Gupta and**

Another, 3. (2012) 12 Supreme Court Cases 180 Kanwar Singh Meena- versus – State of Rajasthan and Another and 4. (2012) 3 Supreme Court Cases (Cri) 1172 Ash Mohammad – versus – Shiv Raj Singh Alias Lalla Babu and Another.

In all the above mentioned cases there were some peculiar and special circumstances on the basis of which bail had been cancelled. Puran's case was a case of dowry death and demand of huge amount in cash and some cruel torture on the deceased which transpired from the materials in the record. The case of Dinesh M.N. (S.P.) and Prakash Kadam were the cases of false encounter by the police. Similarly in the case of Kanwar Singh Meena it came on record that an I.P.S. Officer related to the accused persons tried to influence and jeopardize the investigation. In Ash Mohammad's case the victim was abducted confined and tortured for eight days after which the victim could manage to escape. Needless to mention that in all the aforesaid cases the Hon'ble Apex Court found strong materials against the accused persons.

On the other hand in Salim Bhai Abdul Gaffar Sks.'s case it has been held by the Hon'ble Apex Court that generally bail may be cancelled where it is found that the accused by his act misused the liberty but in exceptional cases bail can be also cancelled where the order granting bail suffers from any serious infirmity. Similar view has

been expressed by the Hon'ble Apex Court in the case of Savitri Agarwal and Others.

In Sanjay Chandra's case it has been held by the Hon'ble Apex Court that the main object of bail is to secure the appearance of the accused during trial. It has been further held therein that grant of bail is the rule while pre-trial detention should be always considered in exceptional circumstances and never it should be used as a punitive or preventive measure.

However, in Ashok Kumar's case Hon'ble Apex Court refused to cancel the bail of the accused on the ground that the accused enjoyed the bail for a considerable length of time in spite of the fact that the order of bail itself suffered from various infirmities.

Let the present cases be considered in the light of the principles laid down by the Hon'ble Apex Court in the aforesaid cases cited by the learned Advocates on both sides.

The original case, i. e., Howrah P.S. Case No. 86/2013, dated 05.02.2013 is a case of murder, initiated on the basis of a written complaint submitted on 05.02.2013 by the present petitioner Md. Raju. The victim of the murder is a brother of the present petitioner. The investigation started on the very day of the registration of the case and most of the witnesses were examined on 05.02.2013. There are two different versions of the

witnesses thus examined. The witnesses closely related to the deceased alleged that the deceased was murdered by the accused persons named in the F.I.R. But some of the witnesses of the locality alleged that the deceased was lynched by a local mob. No substantiative progress was there in the investigation after 05.02.2013 as informed by Mr. Singh.

By an order dated 05.03.2013 (in Criminal Miscellaneous Case No. 306/2013) learned Sessions Judge, Howrah granted anticipatory bail to four accused persons who are the Opposite Parties in C.R.M. No. 8191/2013.

The anticipatory bail granted to five of the accused persons on 05.03.2013 by the learned Sessions Judge, Howrah was on the ground that there was a strong probability of the victim having been killed by a local mob. However, the said anticipatory bail was subsequently cancelled by the High Court on 21.03.2013. Thereafter by an order dated 06.06.2013 learned Sessions Judge, Howrah granted bail to those accused persons under Section 439 Cr. P.C. It should be noted here that the bail thus granted under Section 439 Cr. P. C. was granted after a considerable period from the cancellation of the anticipatory bail by the High Court and the regular bail thus granted on 06.06.2013 was granted after detention of those accused persons in custody for about 51 days and on the ground that further detention was not needed for any

fruitful purpose. Major part of the investigation in the case was performed at the very initial stage and subsequently there was no major progress in investigation as submitted by Mr Singh. In the circumstances we find no serious infirmity or perversity in the order dated 06.06.2013 granting bail to four accused persons by the learned Sessions Judge, Howrah.

The fact in C. R. M. No. 12484/2013 is little different. In this case learned Sessions Judge, Howrah rejected the application for bail for eight accused persons on 29.07.2013 on the ground that those accused persons were named in the F.I.R. and there were prima facie materials against them. But just a few days thereafter, i. e., on 08.08.2013 the prayer for bail of the same accused persons was allowed by the learned Sessions Judge, Howrah, on the ground that further detention of the accused persons was not needed for any purpose. We find no justification for such change of view of the learned Sessions Judge, Howrah within a very short period in the same case. It was no doubt an error in decision. However, because of such reason the order of granting bail in question cannot be termed as 'perverse' especially when learned Public Prosecutor had not opposed the prayer for bail during hearing and according to him further interrogation was not required after the detention of those accused persons in custody for 65 days.

Some of the accused persons have been enjoying the benefit of bail since 06.06.2013 and the other accused persons are also enjoying it since 08.08.2013. There is no adverse report against any of the accused persons suggesting that the accused persons have misused the liberty in any way, as informed by Mr Singh. The question of safety and security of the present petitioner and the other witnesses in the case have already been considered and addressed to in the Writ Petition No. 14796 (W) 2013. In view of such facts and circumstances it would not be wise or fair to snatch away the liberty granted to the accused persons by cancellation of the bail granted to them. The decision in Ashok Kumar's case reported in **J.T. 2009 (2) SC 211** cited by Mr Moitra is relied on.

In view of our findings above, both the C.R.Ms., i. e., C.R.M. No. 8191/2013 and 12484/2013 are dismissed.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Tapash Mookherjee, J)

(Nishita Mhatre, J.)