

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 1525 of 2018

with

IA No. CRAN 1 of 2020

with

CRAN 2 of 2022

IN THE MATTER OF

Sk. Farid @ Fariduddin.

Vs.

The State of West Bengal.

**For the Petitioner : Mr. Debasish Roy, Adv.,
Ms. Sonali Das, Adv.,**

**For the State : Mr. Binoy Kumar Panda, Adv.,
Mr. Narayan Prasad Agarwala, Adv.,
Mr. Subham Bhakat, Adv.,
Mr. Pratick Bose, Adv.**

Judgment on : 20.04.2023

Subhendu Samanta, J.

CRAN 1 of 2022 and CRAN 2 of 2022 is disposed of with
a direction that the delay in preferring the application for

restoration is condoned. The application for restoration is allowed. CRR is hereby restored to its original file and number.

The instant criminal revision is preferred against order dated 8th May 2018 passed by the Additional District and Sessions Judge, Ghatal, Paschim Medinipur, in connection with Criminal Misc case No. 4039 of 2017 in connection with GR No. 388 of 2017 arising out of Ghatal Police Station case No. 118 of 2017 dated 16.06.2017 u/s 458/436/302/120B/506 of IPC.

The brief fact of the case is that the present petitioner was arrayed as an accused along with others in connection with the above mentioned P.S. case. During the course of investigation the accused was arrested and taken into custody. The prayer for bail u/s 439 Cr.P.C. was allowed by the Sessions Judge, in favour of the petitioner vide order dated 25.09.2017.

One application u/s 439 (2) of Cr.P.C. was filed by the de facto complainant for cancellation of the bail. Learned Sessions Judge heard the matter from the both side and passed the impugned order by allowing the application for cancellation of bail and the order of granting bail in favour of the present petitioner was cancelled.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the Impugned Order passed by the Learned Sessions Judge, is palpably illegal and irregular.

The opinion of the learned Sessions Judge, in passing the impugned order is erroneous the Learned Sessions Judge, has misread and misconstrued the provision enumerated u/s 439 (2) of the Cr.P.C. and came to an erroneous conclusion. He further argued that other accused persons in this case are enlarged on bail. So by cancelling the order of bail by virtue of an application u/s 439 (2) Cr.P.C. would not serve any fruitful purpose. He further argued that the learned Sessions Judge has failed to appreciate the facts and circumstances of this case. The observation of the Learned Sessions Judge regarding the fact that on the earlier occasion the bail prayer of the present petitioner was turned down by the Hon'ble High Court is not logically correct. The Hon'ble High Court considered the bail prayer of the present petitioner in CRM No. 8390 of 2017 at the stage prior to submission of the charge sheet. The order of bail by the Sessions Court was granted in favour of the present petitioner after submission of charge sheet on the ground that some accused persons were already granted bail. He further argued that petitioner never suppressed regarding the earlier order of Hon'ble High court. Thus, he prayed for

setting aside the impugned order passed by the Learned Sessions Judge.

Learned Advocate appearing on behalf of the private opposite party/de facto complainant submitted before this court that the impugned order passed by the Learned Sessions Judge, suffers no illegality at the time of making prayer before the Learned Sessions Judge, for bail the present petitioner accused suppressed the fact that his bail prayer was turned down by the Hon'ble High court. If the fact of rejection of bail prayer was not suppressed, the prayer for bail would not have been granted. In passing the impugned order Learned Sessions Judge, had correctly opined that suppression of Order of a High Court regarding rejection of bail prayer tantamount to practising fraud upon court. He further pointed out that due to a pendency of this instant criminal revision the criminal trial of a barbaric murder case is stalled. The present petitioner has adopted several dilatory tactics to vitiate the trial. Thus, he prayed that the instant criminal revision may be rejected with cost.

Heard the Learned Advocate, perused the impugned order passed by the Learned Sessions Judge. It appears from the impugned order that while submitted the bail prayer the present petitioner on affidavit stated no application for bail has

been either rejected by the Hon'ble High Court or pending for disposal before the Hon'ble High Court. On the basis of such declaration the order of bail was granted. Learned Sessions Judge, in passing the Impugned Order is of view that the suppression of earlier rejection of bail prayer by the Hon'ble High court is a fraud practice upon a court.

It is true that the bail prayer of the present petitioner was rejected by the Honb'le High Court when the investigation of the case was in progress. The Sessions Judge has granted the bail prayer of the present accused petitioner after submission of charge sheet. It is the dictate of the law that the application for bail u/s 439 Cr.P.C. should be filed with an affidavit of the applicant regarding the fact that whether his earlier bail prayer was pending or rejected by the upper court.

The power of granting bail u/s 439 Cr.P.C. is within the concurrent jurisdiction of High Court and Court of Sessions. Thus, to maintain the judicial discipline as well as to avoid difference of finding of opinion, the applicant is duty bound to mentioned whether his earlier bail prayer was either pending or rejected by the High Court or not. Its solemn authority of the Sessions Judge, to consider the bail prayer of an accused u/s 439 Cr.P.C. independently. At the same time it is the duty of

the applicant to inform the Learned Sessions Judge, regarding the fate of his earlier application of bail.

The power u/s 439(2) Cr.P.C. for cancellation of bail granted earlier is discretionary.

In the instant case it appears to me that the Sessions Judge has exercised its jurisdiction very correctly. There appear no illegality in the impugned order. I further opined that I find no justification to entertain the instant criminal revision for rejection of the impugned order passed by the Learned Sessions Judge, u/s 439 (2) Cr.P.C. In result thereof the instant criminal revision being devoid of merit is rejected.

CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by the court during the pendency of the instant criminal revision is also vacated.

(Subhendu Samanta, J.)