

Sikkim High Court Pem Dorjee Bhutia And Anr. vs State Of Sikkim on 22 August, 2001 Equivalent citations: 2002 CriLJ 4641 Author: A Deb Bench: A Deb ORDER Anup Deb, J. 1. This revision petition has been filed by these accused petitioners with a prayer to set aside the Order dated 11-1-2001 passed by the Learned Sessions Judge, Special Division in Criminal Case No. 17 of 1999 cancelling the bail of the accused persons in the interest of justice. 2. Mr. N. Lepcha, learned counsel appearing for the accused petitioners submits that the cancellation of bail was made without going through the materials on record and, therefore, it amounted to violation of principles of natural justice. 3. Charge-sheet was filed against six accused persons including two accused under Sections 325/395, Indian Penal Code read with Section 25, Arms Act, 1959 and cognizance was duly taken and the case was registered as Criminal Case No. 17 of 1999 in the Court of the Learned Sessions Judge, East and North, Gangtok. Bail was granted to all the accused persons on 2-7-1999 after charge-sheet was filed. The case was transferred in the Court of Learned Sessions Judge, Special Division on 12-5-2000. In the meantime, two accused persons, namely, Pem Dorjee Bhutia and Deepak Subba accused petitioners Nos. 1 and 2 were involved in Singtam P.S. case No. 32(12) 2000 under Sections 395, 342, 323, 427, 353, 34 of the Indian Penal Code and these two accused petitioners along with others were arrested on 8-1 -2001. It is stated by Mr. Lepcha that charge-sheet was subsequently filed under Sections 342/353/427/323/34 Indian Penal Code in the aforesaid Singtam Police Station Case. 4. Mr. S.P. Wangdi, learned Public Prosecutor appearing for the State submits that the application for cancellation of bail in respect of the accused-petitioners was filed on 9-1-2001 before the learned Sessions Judge, Special Division and order was passed on 9-1-2001. It is evident from records that opportunity was given for filing objection against the application for cancellation of bail. In the application for cancellation of bail under Section 439(32), Cr.P.C. the learned Public Prosecutor inter-alia stated that while on bail these two accused petitioners were reported to be involved in Singtam P.S. Case No. 32(12) 2000 for offences under Sections 395/342/323/427/353/34, Indian Penal Code and, therefore, these two accused persons have misused their liberty. A written objection was filed on 10-1-2001. In paragraph 6 of the objection, the accused petitioners denied that they have misused their liberty by allegedly being involved in commission of offence in a subsequent case. It is therefore clear from the record that bail was not cancelled without giving any opportunity to the accused petitioners. The matter was heard on 11-1-2001. Both the accused persons were given opportunity of hearing. They were present and they were represented by a Counsel. Therefore principles of natural justice was not violated. 5. A Sessions Judge has the power to cancel bail in an earlier case, if an accused is found to be involved in non-bailable offence while on bail by affording reasonable opportunity. Such conduct of the accused amounts to misuse of privilege given by enlarging on bail. Therefore, the order of the learned Sessions Judge, Special Division does not suffer from any infirmity or material irregularity. I am of the view that the accused-petitioners failed to substantiate that the order dated suffers from any incorrectness, illegality and impropriety. 6. In the result, the revision fails and is dismissed. The accused

be taken into custody. Let the trial Court record be sent at once.