

Mani Prasad Singh vs The State Of West Bengal & Anr on 12 April, 2016

Author: Patherya

Bench: Indrajit Chatterjee, Patherya

IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

Present : The Hon'ble Justice Nadira Patherya
And
The Hon'ble Justice Indrajit Chatterjee

C.R.M. No. 12213 of 2015
With
CRAN 10 of 2016

Mani Prasad Singh
VERSUS
The State of West Bengal & Anr.

For the Petitioner :Mr. Uday Sankar Bhattacharya,
Mr. Narendra Prasad Gupta,
Mr. Anupam Bhattacharya,
Mr. Somnath Nasker,
Mr. Syed Arif Ahmed,
Mr. Angshuman Patra.

For the State :Mr. Manjit Singh, Ld. P.P.
Mr. Pawan Kumar Gupta.

For the Opposite Party No.2 :Mr. Sudipta Maitra, Sr. Counsel,
Mr. M.M. Verma,
Mr. Swapan Mallick,
Mr. Anupam Mukherjee,
Mr. Biplob Das,
Mr. Vijay Verma.

Heard on : 11.01.2016, 15.01.2016, 18.01.2016,
25.01.2016, 01.02.2016, 05.02.2016,
08.02.2016, 09.02.2016, 10.02.2016,
23.02.2016 & 03.03.2016

Judgment on : 12th April, 2016.
Patherya J. :

By this application the petitioner seeks to cancel the bail granted to the opposite party no.2 by order dated 22nd December, 2015 in Criminal Misc. Case No.8794 of 2015 filed under Section 438 Cr.P.C. arising out of Cossipore Police Station Case No.88 dated 15th April, 2015 filed under Sections 148/149/326/307/427 I.P.C. read with Section 3 and 5 of the Explosive Substances Act read with Section 25(i)(b)/27 Arms Act, on the ground that the said order was obtained by suppression of facts.

The case of the petitioner is that the date of incident is 15th April, 2015 when the opposite party no.2 and his associates attacked the gate of the petitioner's house, broke the plastic chairs and soda making machines and threatened the petitioner's family members. Although telephonic information was given to the Officer-in-Charge of the Cossipore Police Station and to the Deputy Commissioner of Police, North and North Suburban Division, Kolkata, no step was taken by them. The only reason for creating an atmosphere of terror in the said Cossipore area by the opposite party no.2 and his associates was to discourage the people of the area from coming out of the house to vote on the date of general election in the Kolkata Municipal area on 18th April, 2015. The opposite party no.2 and his associates attacked the house of the petitioner and also hurled bombs and fired bullets. Some persons suffered bullet injury and were admitted to the R.G. Kar Medical College and Hospital. The said incident was reported in the Telegraph on 16th April, 2015. As no step was taken by the police authorities W.P.8574 (W) of 2015 and W.P.476 (W) of 2016 were filed. Cossipore P.S. Case No.88 dated 15th April, 2015 and Cossipore P.S. Case No.89 dated 17th April, 2015 were also filed. A warrant of arrest was also issued against

the opposite party no.2. The said warrant of arrest was not executed as the opposite party no.2 and his associates are influential people in the said Cossipore area as a result whereof the next process, namely, W/P/A has been issued.

An application was filed under Section 438 Cr.P.C. before the Sessions Judge, Alipore on 14th August, 2015 to which the petitioner as a victim submitted a written objection. The said application was rejected as not moved on 27th August, 2015. A second application was filed on 29th September, 2015 and was rejected as none appeared to move it on 28th October, 2015. In the second application there was no mention of the change in circumstance since the rejection of the first application. A third application under Section 438 Cr.P.C. was filed on 31st October, 2015 suppressing the fact of rejection of the earlier two applications with no change in circumstance. By non-disclosure the opposite party no.2 suppressed facts and practiced fraud on Court. A written objection was also given by the petitioner to the said third application. On 12th October, 2015 at about 11 a.m. some persons threatened the petitioner with dire consequences in the event the written objection was not withdrawn. Thereafter, on 24th October, 2015, i.e., before the second application was rejected for non-appearance some suspected persons came to the petitioner's house when he was out of station and hurled bombs which resulted in damage to the petitioner's house. It is because of the written objection filed by the petitioner that the opposite party has sought to terrorize the petitioner and his family members. A complaint was sent to the Registrar General, High Court, Calcutta, Registrar (Administration), High Court, Calcutta and District and Sessions Judge, Alipore through speed post on 29th September, 2015. CRR 3746 of 2015 was filed under Article 227 of the Constitution of India read with Section 407 Cr.P.C. for transfer of CMC Case No.8794 of 2015 from the Court of the Sessions Judge, Alipore to

the City Sessions Judge, Calcutta. The written objection along with the order passed in CRR 3746 of 2015 was placed before the Sessions Judge, Alipore.

On 16th November, 2015 a complaint was filed under Section 386/341/34 I.P.C. read with Section 25(i)(b) of the Arms Act against the opposite party no.2 and his associates. On 17th November, 2015 too a complaint was filed under Section 224/332/114 I.P.C. against the petitioner and his associates. An attempt was made to arrest the opposite party no.2 but due to strong resistance of Bulbul Dasgupta and 50 to 60 ladies the arrest could not be made.

The warrant of arrest which had been issued was fixed for filing of the execution report on 16th December, 2015. As the warrant of arrest remained unexecuted the Court below issued W/P/A. The said order along with objection and other documents were handed to the Court below at the hearing fixed on 19th December, 2015. The I.O. was directed to collect and produce the copy of the order passed by the High Court on 22nd December, 2015, on which day the Sessions Judge-in-Charge without considering the written objection filed by the petitioner granted anticipatory bail to the opposite party no.2. A formal objection was raised by the learned P.P. who submitted that the co-accused have been granted bail and, therefore, anticipatory bail be also granted to the opposite party no.2. Filing of the charge sheet also weighed with the Trial Court while passing the order dated 22nd December, 2013.

The petitioner is a victim under Section 2(wa) Cr.P.C. and has suffered injury and loss by reason of the act of the opposite party no.2 and in view of AIR 2000 SC 1851, (2001) 6 SCC 338 and (2013) 16 SCC 190 has suffered mental

injury and is entitled to maintain this application. Under the Right To Information Act the petitioner has come to know that several cases are pending against the opposite party no.2, one of them being under Section 302 I.P.C.

On 14th August, 2015 Criminal Misc. Case No.6628 of 2015 was filed before the Sessions Judge, Alipore and although CD was produced and I.O. was present, none appeared to move the application, therefore, the application was rejected as not moved. On 29th September, 2015 Criminal Misc. Case No.7757 of 2015 was filed. The said was also dismissed as none appeared. Although CD was produced, none appeared to move the petition and the same was rejected. It is only thereafter, CMC 8794 of 2015 was filed on 31st October, 2015 and it is on this application that the order dated 22nd December, 2015 was passed. In the said application there is no mention of the earlier applications filed and this amounts to suppression of material facts. The application was liable to be rejected as the petitioner had not come to Court with clean hands. A written objection was filed by the petitioner in which he had categorically stated that the opposite party no.2 is an influential person who can tamper with evidence, but the same was not considered by the Court below. The opposite party no.2 had also threatened the witnesses and it is because of the misdeeds and evil acts of the opposite party no.2 and his associates that the family members of the petitioner are passing their days in fear and anxiety.

While passing the order under Section 438(2) its parameter ought to have been considered as held in (2012) 4 All India Criminal Law Reporter 515 (SC). The antecedents and cases pending against the accused ought to have been considered prior to grant of anticipatory bail. For the said proposition reliance is placed on (2012) 2 AI Cr.L.R. 630 (SC). A habitual offender ought not to be

granted anticipatory bail as held in (2013) 2 AI. Cr.L.R 324. As there has been suppression and fraud on Court, no order of anticipatory bail ought to have been granted as held in (2013) 3 AI Cr.L.R. 577 (SC). An absconder will not be entitled to anticipatory bail as held in (2014) 3 AI. Cr.L.R. 630. There has been total non-application of mind as held in (2015) 2 AI. Cr.L.R. 199 and having been proclaimed as an offender no anticipatory bail ought to have been granted as held in (2014) 2 CLJ 532. Reliance is also placed on (2012) 3 AI. Cr.L.R. 39. Being a victim under Section 2(wa) Cr.P.C. and having suffered injury as per Section 44 I.P.C. the anticipatory bail granted to the opposite party no.2 ought to be cancelled.

Learned P.P. for the State submits that as per Lavesh's judgement the opposite party no.2 was not proclaimed as an offender and, therefore, an application under Section 482 Cr.P.C. can be maintained. The petitioner in the lower Court, namely, the opposite party no.2 did not come to the Court with clean hands. The first application was filed on 14th August, 2015 and rejected by order dated 27th August, 2015. The second application was filed by the same advocate on 29th September, 2015 and rejected on 28th October, 2015. In the said criminal miscellaneous case which was filed, there was no mention of the earlier application filed. The third application was filed on 31st October, 2015 again by the same advocate. There was no mention of the earlier applications filed and it was on the third application that the order dated 22nd December, 2015 was passed.

Reliance is placed on (2010) 2 Eastern Criminal Laws (Cal) 118, (2011) 3 Eastern Criminal Law Notes (Cal) 122, (2011) 2 Eastern Criminal Law Notes (Cal) 1316.

On behalf of the opposite party no.2, Counsel submits that Section 2(wa) Cr.P.C. defines "victim" and "victim" must be a victim of the case filed. Injury as postulated under Section 44 Cr.P.C. must be suffered by such victim. The case was registered on 15th April, 2015 being the date of incident and the petitioner to be a victim must be a victim on that date. He must have suffered loss and damage on that day. In the F.I.R. filed there is no mention of the petitioner's name. There is no case registered by the petitioner till date or even after 18th April, 2015. In the F.I.R. also there is no mention of the petitioner being a victim.

Reliance is placed on (2006) 3 SCC (Cri) 125, (1993) SCC (Cri) 22, (2009) Criminal Law Journal 1943 Madras and (2000) SCC (Cri) 958. The petitioner is not seeking suo motu exercise of powers by the High Court for cancellation of bail. There is no alternate prayer seeking invocation of suo motu power. Therefore, the High Court ought not to invoke such powers. The application filed was under Section 438 Cr.P.C. Rejection as not moved is of no consequence, therefore, there is no requirement to mention the same, and suppression cannot be alleged as held in (2003) 1 CHN 200. The application was filed under Section 438 Cr.P.C. and the surrender was under Section 439 Cr.P.C. Reliance is placed on (1996) 4 SCC 693, (2004) 11 SCC 165, (2014) 16 SCC 501 for the proposition that it is a duty cast on the prosecution to bring the materials before the Court and in bail matters there is no question of any suppression of facts. Reliance is placed on AIR 1978 SC 1095. On the earlier applications there has been no adjudication on merit and they were dismissed as not pressed. Suppression has been defined in Advance Law Lexicon at page 4569 to mean wrongful gain. From the order dated 22nd December, 2015 it will appear that the case diary was considered as it was produced and the I.O. was also present. Advocates had also

appeared and made submissions. The first rejection order is dated 27th August, 2015 and the second rejection order is 28th October, 2015. Prior thereto on 29th September, 2015 and 9th October, 2015 the case diary was produced. Non-mention of the petition will not non-suit or shut the doors of Court for the opposite party no.2.

Reliance is placed on (2010) Criminal Law Journal (NOC 1098) 286 and (1997) 10 SCC 528 to expound the meaning of the word suppression, which is an active concealment and deliberate or conscious omission to state a fact in order to make a wrongful gain and it must have a direct bearing on the facts. Such is not the case here. There is no suppression in the strictest sense as held in (1995) Criminal Law Journal 185, therefore, no fraud can be alleged. Reliance is placed on (2003) 1 SCC 326. The post-bail conduct and other supervening circumstance must be looked into as held in (2008) 1 SCC 212. Suppression must be of a material fact as held in (2004) 7 SCC 166. Reliance is also placed on (2011) 1 SCC 694, (2016) 1 SCC 152, (1990) Criminal Law Journal 2184, AIR 2010 SC 91, (2004) 11 SCC 165, (2009) 8 SCC 325 for the proposition that for cancellation of bail cogent and overwhelming circumstance must exist and the concession must be abused by threat to witnesses or defacto complainant by the person enlarged on bail. In the charge sheet petitioner has not been cited as a witness, therefore, any threats to him is irrelevant. The warrant of arrest was issued on 24th April, 2015. The written objection was given to the third application filed for anticipatory bail and therein, the threats which have been alleged must have been stated. The threats alleged are prior to 22nd December, 2015 and not thereafter. The petitioner is neither a witness nor a defacto complainant and suo motu exercise of power is not to be exercised or invoked under Section 482 Cr.P.C. It is only in cases of cogent and overwhelming circumstance that the

anticipatory bail granted ought to be cancelled as held in (1984) SCC (Cri) 62 and (2014) 4 Crimes 561 (SC). Unless a person is a proclaimed offender, there is no bar to grant of anticipatory bail to him as held in (2012) 8 SCC 736. No supervening circumstance intervened nor has there been any threat after 22nd December, 2015 as held in (2004) SCC (Cri) 2034. The Petitioner Mani Prasad Singh, Munna Singh the complainant on 17th April, 2015 and the daughter-in-law who is also a complainant have not been cited as witness. Reliance is placed on (2005) Criminal Law Journal 2187.

In reply Counsel for the petitioner submits that he has locus standi to maintain the petition in view of the mental agony suffered by him which makes him a victim. There has been a manifest error, therefore, the bail ought to be cancelled. In the decision reported in (2013) 16 SCC 190 the factors for cancellation have been set out. As will appear from the petition the opposite party no.2 did not allow execution of the warrant of arrest. This will appear from the order of the Court below. All the decisions cited were of supervening circumstance, therefore, are not applicable. (2006) 3 SCC (Cri) 125 is distinguishable on facts as it related to public interest litigation and there is no direct connection with the offence. (1993) SCC (Cri) 22 is also distinguishable on facts.

Cossipore P.S. Case No.26 of 2016 dated 27th January, 2016 was filed under Section 307/34 I.P.C. It is in this police case that the opposite party no.2 was taken in custody and thereafter enlarged on bail. On 24th January, 2016 Cossipore P.S. Case No.24/16 under Section 307/324/341/354B/379 was filed. Cossipore P.S. Case No.3 of 2016 dated 5th January, 2016 was also filed under Section 114 I.P.C. In view of the aforesaid, therefore, orders be passed are

sought .

Having considered the submission of the parties, the petitioner seeks cancellation of the bail granted by the order dated 22nd December, 2015. Before addressing the issue the locus standi of the petitioner to maintain the application ought to be addressed. The petitioner has described himself as a "victim" under Section 2(wa) Cr.P.C. who has suffered injury under Section 44 I.P.C. To be a "victim" under Section 2(wa) Cr.P.C. the person must have suffered loss or injury caused by the acts or omission for which the accused person has been charged. "Injury" as per Section 44 I.P.C. denotes any harm illegally caused to any person in body, mind, reputation or property. The petitioner has alleged that he suffered injury on 15th April, 2015 in the following manner:-

"7. That your petitioner states that on 15.04.2015 the said opposite party no.2 and his gangs attacked the gate of the petitioner's house and broken the plastic chairs and soda making machines and threatened the family members of the petitioner with d consequences.

.....
..... Thus the petitioner suffered by loss and threat to endanger of life and property caused by reason of the act and the commission of offences committed by the said opposite party no.2 and his gangs." The said has been dealt with in a general manner in the affidavit affirmed on 4th January, 2016 by the opposite party no.2 as follows in Paragraph-7.

"7. With regard to the statements contained in the paragraphs Nos.4 to 10 of the said application, I state that those are totally false and fabricated.

I emphatically deny and dispute the said statements as made therein.

I further state that many of the statements have got no relevancy in the instant case, that is Cossipore P.S. Case No.88 dated 15-04-2015."

Therefore, in view of the decisions reported in AIR 2000 SC 1851 (R. Rathinam - vs - State), (2001) 1 SCC 338 and (2013) 16 SCC 190 the petitioner is an aggrieved person who has suffered injury in mind and being a victim is entitled to maintain this application.

It is true that the petitioner has not filed any complaint with the local police station but non-filing of a complaint will not deprive him of being an aggrieved party. Therefore, the petitioner has the locus standi to file this application.

Having held as above the grounds on which bail can be cancelled as held in (2001) 6 SCC 338 are:-

(i) where the order granting bail did not consider the evidence and material on record.

or

(ii) where the accused had misconducted himself post grant of bail or

(iii) new facts and circumstances have arisen.

In the light of the aforesaid grounds, therefore, the cancellation of bail granted to the opposite party no.1 must be considered.

The complaint was filed on 15th April, 2015 under Section 148/149/326/307/427 I.P.C. and Section 3 and 5 of the Explosive Substance Act and Section 25(i)(b)/27 Arms Act. The said complaint was filed suo motu by a police officer. An application was filed under Section 438 Cr.P.C. by the opposite party no.2 which application was rejected as not pressed on 27th August, 2015. A 2nd application under Section 438 Cr.P.C. was filed on 29th September, 2015 by the same Advocate in which CD was called. On 9th October, 2015 CD was produced and adjournment sought by the opposite party no.2 till 28th October, 2015. On 28th October, 2015 also the CD was available but as none appeared for the opposite party no.2 the application was rejected. Subsequent thereto, on 31st October, 2015 for the third time an application under Section 438 Cr.P.C. was filed by the same Advocate. In this application there was no mention of the earlier applications filed or the fate thereof. It is true that the 1st application was rejected as not pressed but in the 2nd application the CD had been produced. On 24th April, 2015 a warrant of arrest had been issued against the opposite party no.1 on the prayer of the I.O. On 16th December, 2015 the Court below was informed that the warrant of arrest had not been executed and a report was filed. Accordingly W/P/A was directed to be issued against the opposite party no.1 and matter was to appear on 12th February, 2016. On 19th December, 2015 when the 3rd application came up for hearing the I.O. was directed to ascertain the status of the case pending before the High Court by 22nd December, 2015. On 22nd December, 2015 a formal objection was raised by the P.P. and as co-accused had been granted bail, and charge-sheet submitted pre-arrest bail was granted to the opposite party no.2.

Such grant of pre-arrest bail is under scrutiny, and while granting anticipatory bail it was incumbent on the Court below to consider the case diary carefully, a duty was also cast on the P.P. to go through

the case diary carefully and to place the materials therein before the Court. Although in Criminal Misc. Case No.7757 of 2015 the case diary had been produced on 9th October, 2015 the application on 28th October, 2015 was rejected for non-appearance. The non- execution of the warrant of arrest of the opposite party no.2 so also issuance of W/P/A was brought to the notice of the Court by the petitioner as submitted on his behalf, but not much would turn on this as mere issuance of W/P/A would not debar the opposite party no.2 to grant of anticipatory bail as according to Laves's judgment the accused must be a proclaimed offender/absconder which the opposite party no.2 was not on the day of grant of pre-arrest bail.

In the instant case no irrelevant material was considered to render the order granting bail vulnerable and therefore the question of the order being perverse or being set at naught cannot arise. In view thereof (2008) 3 A.I.Cr.L.R. (SC) 175 is not applicable to this case.

It has been pleaded by the petitioner in Paragraph 29 of the petition that rejection of the application under Section 438 Cr.P.C. was sought on his behalf looking at the gravity of the offence and criminal antecedent of the opposite party no.2. Cases were also cited but the same were not considered. This can be no ground for cancellation of bail. No written objection filed in the Court below has been annexed to the petition filed.

The information sought under the RTI Act, 1985 was received by letter dated 13th August, 2015. The cases registered are of 1978, 1982 and 1983. Even if the records were called for, the following would have been found, namely :-

- (i) The warrant of arrest though issued remained unexecuted.
- (ii) W/P/A was directed to be issued on 16th December, 2015 and was returnable on 12th February, 2016.
- (iii) In the charge sheet filed on 21st December, 2015 the opposite party no.2 was named as a charge-sheeted accused person but neither the petitioner nor his daughter-in-law were cited as witness.

The petitioner on 22nd December, 2015 was not a proclaimed offender/absconder. The application on which the order dated 22nd December, 2015 was passed had been filed in October 2015. Therefore, it cannot be said that the grant of anticipatory bail to the opposite party no.2 was in the absence of materials on record or was granted without looking into the materials in the CD.

Post bail conduct or supervening circumstance is not a ground for cancellation of bail. Therefore, (2008) 1 SCC 213 will not apply to the instant case.

Suppression cannot be alleged in the instant case as the 1st application was rejected as "not pressed" and the 2nd application was rejected as none appeared. Both were not rejected on merits. Even if the opposite party no.2 did not mention it, it was the bounden duty of the P.P. to inform the Court below as on 28th October, 2015 when the 2nd application was rejected the case diary was available.

Therefore, (1996) 4 SCC 693 and (2004) 7 SCC aid the opposite party no.2.

It is true that bail granted can be cancelled on new adverse facts which has surfaced after grant or that there has been gross misrepresentation of facts thereby misleading the Court and indulging in fraud. No new adverse fact has emerged. Even assuming filing of Cossipore P.S. Case No.26 of 2016 dated 27th January, 2016, Cossipore P.S. Case No.24 of 2016 dated 24th January, 2016 and Cossipore P.S. Case No.3 of 2016 dated 5th January, 2016 to be a new adverse fact, the petitioner was taken in custody and enlarged on bail in Cossipore P.S. Case No.26 of 2016. There has been no misrepresentation of facts thereby cancellation of bail is uncalled for and (2014) 4 Crimes 561 (SC) aids the opposite party no.2.

(2000) SCC (Cri) 958 aids the petitioner as being a victim he has brought to light facts which the Court below ought to have considered at the time of grant of bail.

(2006) 3 SCC (Cri) 125 is distinguishable on facts as the petitioners in the cited decision were strangers and could not prove that the respondents had issued the bail granted. In the instant case the petitioner is a victim under Section 2(wa) Cr.P.C. who has suffered injury.

(1993) SCC (Cri) 22 is distinguishable on facts and is a decision which came before 31st December, 2009 when Section 2(wa) Cr.P.C. was inserted. It was a Public Interest Litigation which was being dealt with.

Similarly, (2009) Cr.L.J. 1943 (Madras) is distinguishable on facts as the petitioner therein was not a victim and, therefore, not an aggrieved person and will not apply to the facts of the case in hand.

(2003) 1 CHN 200 is distinguishable on facts as in the reported decision bail had been granted under Section 439 Cr.P.C. on surrender and not under Section 438 Cr.P.C.

(1990) Cr.L.J. 2184 was being decided much before Section 2(wa) Cr.P.C. was inserted in 2009. Therefore this decision will not apply to the facts of this case.

As held in (2014) 16 SCC 501 a duty is cast on the prosecution to place all materials before the Court and in this case such duty was discharged by placing the CD before the Court below by the P.P. The complaints filed on 17th April 2015, 16th November 2015, 17th November 2015 could not have formed a part of the case diary of the complaint dated 15th April, 2015. Therefore, the said complaints would not have been in the knowledge of the I.O. and to impute to the Court below non-consideration of the evidence or material on record will not be justified.

As held in (2010) Criminal Law Journal (NOC 1098) 286 and (2003) 1 SCC 326 cogent and overwhelming circumstance must exist to direct cancellation of bail granted. It has not been alleged by the petitioner that the post-bail conduct of the petitioner warrants cancellation. It has not also been alleged that the concession has been abused or supervening circumstance has intervened. As there has been no suppression AIR (1978) SC 1095 and (1995) Cr.L.J. 184 will not apply to the facts of this case. There is no dispute with the proposition laid down in (1997) 10 SCC 538, (2016) 1 SCC

152, (2013) 3 AICLR 577 and (2011) 1 SCC 694.

It will also not be out of place to mention that the petitioner has not filed any complaint either on the date of incident or thereafter. In view of the aforesaid this application calls for no interference and is accordingly dismissed. CRAN 10 of 2016 is also dismissed.

(Patherya, J.) I agree (Indrajit Chatterjee, J.)