Chhaila Pradhan And State Of Orissa vs Bansidhar Pradhan And Two Ors. And ... on 22 September, 1986

Equivalent citations: 1986(II)OLR520

JUDGMENT

B.K. Behera, J.

1. Continuance or cancellation of the bail granted to the accused-opposite parties is the question for consideration in these three Criminal Miscellaneous Cases Instituted Under Section 439(2) of the Code of Criminal Procedure (for short, 'the Code') which have been heard together and will be governed by this common order. The State has moved for cancellation of the bail granted to two of the opposite parties, namely, Banshidhar hearing the learned Additional Government Advocate has supported the application made by the first-informant in Criminal Miscellaneous Case No. 373 of 1986, besides pressing for cancellation . of bail in Criminal Miscellaneous Case No. 388 of 1986 which has been instituted by the State.

2. The four opposite parties, besides others, are alleged to have committed the offence of double murder by assaulting jugal Pradhan and Abhay Pradhan to death in furtherance of their common object being armed with deadly weapons on December 11, 1985. They are also alleged to have committed offence punishable Under Sections 147, 148, ,30/. 323 and 325 read-with Section 149 of the Indian Penal Code for attempting to commit murder and causing grievous and simple hurt. A charge-sheet was placed against the opposite parties on March 11, 1986, showing the opposite parties Bansidhar and Giridhari as absconders as after the occurrence, these two persons absconded. The had made an application for antrcipatory which was rejected in Criminal. Miscelaneous Case No. 107of 1986 and thereafter surrendered in the Court of the learned Sessions Judge, Pun, and moved for bail in Criminal Miscelaneus Case No 249 of 1986 which was allowed. The other two opposite parties, namely, Bhagaban Pradhan and Nabakishore Pradhan, had earlier moved for bail in the Court of the learned Sessions judge in Criminal Miscellaneous Case No, 661 of 1985 and 116 of 1986 which had been rejected, but later they moved for there bail again in Criminal. Miscellaneous Case No. 250 of 1986 which was taken up again with Criminal Misce.laneous Case No. 249 of 1986 instituted by the two opposite parties and bail was granted to the four opposite parties by Mr. R. S. P. Patnaik, Sessions Judge, Pun.

3 As has been submitted at the Bar, the four opposite parties named above had dealt fatal blows on the two deceased persons at the time of the occurrence and there are no paucity of materials, as can be seen from the case diary, in this regard. As a matter of fact, even as observed by the learned Sessions Judge, there is a strong prima facie case against the opposite parties. Bail has been granted by the learned Judge mainly relying on the Principles laid down by the Supreme Court in AIR 1984 S. C. 372 Bhagirath Singh Judge v. State of Gujarat, that in the absence of circumstances showing

that there is likelihood of the opposite parties absconding or tampering with the prosecution evidence, bail should be granted even when there is a prima facie case and while granting bail, notice was taken by the learned Sessions judge of some circumstances suggesting a right of private defence of person and property on the part of the opposite parties.

4 While it has been submitted on behalf of the applicants with reference to a number of judicial pronouncements of the Supreme Court and different High Courts including this Court that bail has been granted to the four opposite parties not only improperly, but also illegally by exercising judicial discretion arbitrarily and capriciously, it has been submitted on behalf of the four opposite parties that there should be exceptional circumstances for cancellation of the bail granted to the opposite parties which arc non-existent and in the absence of supervening circumstances or additional materials obtaining in the case and indicating abuse of liberty by the opposite parties after they were admitted to bail, bail ought not to be cancelled. In support of these contentions, reliance has been placed on a number of reported cases which will be referred to hereinafter.

5. In view of the submissions made at the Bar and the fact that a charge-sheet has been submitted against the opposite parties, besides others, after finding out prima facie materials for their prosecution, it is not necessary to refer to the materials placed against the opposite parties. Suffice it to say that there is a strong prima facie case against them that they had shared the common object in committing the murders of two persons on the spot.

6. The learned Sessions Judge was not justified in making a detailed examination of the, materials and circumstances suggesting the existence of the right of private defence of person and property. As observed and held 'by this Court in XXXVIII (1971) CLT 629 State of Orissa v. Damodar Pentia and another, where there is prima facie evidence of the commission of an offence punishable with death or imprisonment for life the question of the possible defence is to be left to be decided by the Court of trial and should not be gone into while determining the question of grant of "bail. In AIR 1980 S.C. 786 Niranjan Singh and Anr. v. Prabhakar Ranjan Kharata and others, the Supreme Court has held :

> "Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

The learned Sessions Judge went wrong in judging the question of the possible defence which might be set up by the opposite parties while considering the question of grant of bail to them.

7. In this background, the question that arises for consideration is as to whether it is a fit case for cancellation of bail on the grounds of illegality and impropriety on the part of the learned Sessions Judge, as urged on behalf of the applicants.

8. Section 439 of the Code reads:

"439. Special power of High Court or Court of Session regarding bail__(I) A High Court or Court of Session may direct__

(a) that any person accused of an offence and in custody be released on bail and if the offence is of the nature specified in Sub-section (8) of Section 437 may impose any condition which it considers necessary for the purpose mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of offenre which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

The provision made in Section 439(2) is not. wholly akin to that made in Section 437(5) of the Code providing for cancellation of bail granted by a Magistrate Under Section 437 (1) or (2) of the Code. It is significant to note that while Section 437(5) provides that any Court which has released a person under Sub-section (1) or (2), may, if ft considers it necessary so to do, direct that such person be arrested and commit him to custody, the expression "If it considers it necessary so to do" is conspicuous by its absence in Section 439(2) of the Code which corresponds to Section 498 of the old Code. The scope and amplitude of Section 439(2) appear to be much wider than those of Section 437(5) of the Code.

9. Referring to some observations made by a Full Bench of this Court in 54(1982) CLT 229 Bijayketan Mohanty v. State of Orissa, in which reference has been made to AIR 1978 S. C. 55 Bashir and Ors. v. State of Haryana and 46(1978) CLT 514 Matia Chalen and Anr. v. State of Orissa, it has been submitted on behalf of the opposite parties that for cancellation of bail by this Court, there must be some supervening or additional circumstances after the grant of bail by the Court of Session. The question for consideration before the Full Bench was not the scope of Section 439(2), but that of Section 437(5) of the Code and in that case, the order canceling bail which had earlier been granted on the ground that a change-sheet had been submitted was set at naught. As has rightly been submitted on behalf of the State, a case is an authority on a question which it decides. What was decided by the Full Bench was the question of-cancellation of bail provided in Section 437(5) of the Code. In this connection, the attention of this Court has been invited to the principles laid down by the Supreme Court in AIR 1968 S. C. 647 State of Orissa v. Sudhansu Sekhar Misira and others, wherein the Supreme Court has observed and held :

> "... A decision is only an authority for what it actually decides What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury LC said in Quina v. Leathern, 1901 AC 495:
>
> "Now before discussing the case of Allen v.. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, 'where every lawyer must acknowledge that the law is not always logical at all.' It is not a profitable task to extract a sentence here and there from a judgment and to build upon it'"

A decision is binding not because of its conclusion, but in regard to its ratio and the principle laid down therein (See AIR 1967 S. C. 480 B. Shama Rao v. Union Territory of Pondicherry). The same view has been taken in AIR 1982 S. C. 149 S. P. Gupta and Ors. v. President of India and others.

10. In AIR 1978 S. C. 961 The State through the Delhi Administration v. Sanjay Gandhi, the Supreme Court has considered as to when and in what circumstances bail may be cancelled and it has been held :

> "Rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another, it is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conclusive to a fair trial to allow the accused to retain his freedom during the trial...."

11. Referring to the observations of the Supreme Court in AIR 1978 S. C. 179 Gurcharan Singh and Ors. v. State (Delhi Admini-stration) and AIR 1978 Supreme Court 961 (supra), a learned Judge of the Kerala High Court has held in 1984(11) Crimes 327 Superintendent of Police CBI/SPE/Cochin v. P. V. Vijaya Raghavan and Ors. :

> "Having bestowed my serious consideration to the two decisions, I am not able to agree that there is any divergence of approach in the two cases or that the latter case by taking a different view must be deemed to prevail over the earlier case. All that can be said so that in the two cases the Supreme Court was dealing with two different sets of facts and the Court laid emphasis on two different aspects when dealing with applications for cancellation of bail. What came up for consideration before Court in

Sanjaya Gandhi's case, was the prosecution allegation that after the release of the accused on bail they influenced the witnesses. Naturally the question which arose for consideration was whether the Court would be satisfied that such a supervening conduct on the part of the accused can be taken to have been established. This does not mean that a supervening conduct or circumstance has been proved. In fact in the passage extracted above from paragraph 13 of the judgment in Sanjaya Gandhi's case, the Supreme Court was cautious in observing that cancellation of bail necessarily involved the review of the decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The cautious note struck in this passage would clearly show that the Supreme Court was not laying down a definite proposition that bail can be cancelled only where supervening circumstances justify such an order. In the generality of cases, of course, it must be so. But there may be cases where even in the absence of supervening circumstances the Court would be justified in cancelling bail. Where supervening factors are alleged, the Investigator can move the Sessions Judge which has granted bail or even the High Court. Where there are no circumstances that have cropped' up, when the State is aggrieved by the order of the Sessions Court granting bail, it may be futile for the State to move the Sessions Court for cancellation of bail; it is competent to move the High Court for such relief. If the order is vitiated by any serious infirmity and interests of justice require, the High Court can and has to interfere. Of course the High Court will not ordinarily interfere with the exercise of discretion of the Sessions Court; where it is justified and necessary, the power of cancellation of bail has to be exercised. This is the position' Which emerges from the two decisions of the Supreme Court."

12 The overriding consideration in granting bail and the scope of Section 439(2) of the Code came up for consideration in AIR 1978 Supreme Court 179 (supra). Their Lordships have observed :

"...The overriding consideration in granting bail which are common both in the case of Section 437(1) and Section 439(1), are the nature and gravity of the circumstances in which the offence is committed ; the position and the status of the accused with reference to the victim and the witnesses ; the likelihood of the accused fleeing from justice ; of repeating the offences of jeopardising his own life being faced with a grim prospect of possible conviction in the case ; of tampering with witnesses ; the history, of the case as well and of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out. The two paramount considerations, viz, likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case In a Court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. The question of cancellation of bail Under Section 439(2) is certainly different from admission to bail Under Section 439(1). Under Section 439(2) the High Court or the Court of Session may direct any person who has bean released on bail to be arrested and committed to custody. Under Section 498(2) of

> the Code a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code Under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so."

It has not been held therein that to cancel bail, there must be some supervening or additional circumstances after the grant of bail In paragraph 16 of the judgment, the Supreme Court has observed and held o "...Similarly Under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under Sub-section(1) to be arrested and may commit him to custody. In other words, Under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code Under Section 439(2)."

13. It has been laid down in AIR 1984 S.C. 372 : (1984) (II) Crimes 334 . 1984 Cri. L. J 160 : Bhagirath Singh Judeja v. State of Gujarat that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail. The question of cancellation of bail also came up for consideration before the Supreme Court in AIR 1984 S. C. 1503 : 1984 SCC (Cri.) 444 : (1984) 3 SCC 555 : The State through Deputy Commissioner of Police, Special Branch, Delhi v. Jaspal Singh Gill. Bail was cancelled in that case not for any supervening or additional circumstances, but by taking into consideration the gravity of the offences committed by the accused relating to the security of the State.

14. In the case of Chaganti Satyanarayana and Ors. v. State of Andhra Pradesh 1986 (II) Crimes 678, in which the order passed by the Court of Session cancelling bail granted to the accused under the proviso to Section 167(2)(a) of the Code came up for consideration, the Supreme Court, after holding that the period of ninety days would be counted not from the date of the arrest of the accused, but from the date of the first remand by the Court, upheld the order cancelling bail on the ground that bail had illegally been granted before the period of ninety days allowed under the law.

The principles to be kept in mind while considering an application for cancellation of bail have been dealt with by this Court in 1984 Cri. L. J. 905 : 1984 (I) Crimes 833 : 57(1984) CLT 281: 1984 (I) OLR 262 : 1984 CLR (Criminal) 49 State of Orissa v. Md. Abdul Karim 15 Keeping in view the comparative scope of Sections 437(5) and 439(2) of the Code and the unrestricted power conferred on the High Court and the Court of Session in the matter of cancellation of bail which, no doubt, is to be exercised with due care and circumspection and keeping in mind the principles laid down by

the Supreme Court, this Court and other High Courts, it must be held that bail granted illegally and/or improperly by wrong and arbitrary exercise of judicial discretion can be cancelled by the High Court Under Section 439(2) of the Code, even if there be no additional circumstances against an accused appearing in the record after the grant of bail.

16. The next question for consideration is as to whether in the instant case, bail had been granted illegally and improperly to the opposite parties by the learned Sessions judge. The opposite parties are accused of commission of offences including the offence of double murder which are punishable with death or imprisonment for life. There are materials to connect the opposite parties with the commission of the offences which will be examined and gone into in details at the appropriate stage. The question of right of private defence, If any, of person and/or property is not to be judged at the time of grant of bail, but at the stage of trial, if there be a commitment. As observed by the Supreme Court in AIR 1962 S. C. 253 (The State v. Captain Jagjit Singh, AIR 1978 S. C. 179 (supra) and AIR 1978 S.C 429 Gudikanti Narasimhulu and Ors. v. Public Prosecutor, dealing with the principles governing the grant of bail, before granting bail involving non-bailable offences, particularly where the trial has not yet commenced, the Court should take into consideration vorious matters, such as, the nature and seriousness of the offence the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the evidence of the witnesses being tampered with, the larger interest of the public or State and similar there considerations this view has been taken by the Supreme Court in AIR 1984 Supreme Court 1503 (supra)

17. In the instant case, the application for anticipatory bait by two of the opposite parties, namely, Bansidhar and Ciridhari, had been rejected by the learned Sessions Judge at a stage when these two opposite parties were absconding and were avoiding arrest in the course of investigation. The same two persons surrendered in the Court on March 21,1986, i e, more than three months after the occurrence during which period they had made themselves scarce by abscondance and applied to the Court for bail Under Section 439(1) of the Code Strangely, however, the learned Additional Sessions Judge, who was in charge of the' Court of the learned Sessions Judge on that day, did not commit them to custody and the case was posted to April 2, 1986. On that day also, the opposite parties put in their memo of appearance and were present in the Court, but they were not taken into custody although they had surrendered The case was posted to April 3, 1986, on which day also, in spite of their presence, they were not taken into custody, arguments were heard and the case was posted to the next day for order. Orders were passed in this case and in Criminal Miscellaneous Case No. 250 of 1986 and the four opposite parties were admitted to bail. When persons accused of commission of non-bailable offences surrender, as In the instant case, in which non-bailable warrants of arrest had been issued against the two obsconding accused persons who, after their surrender, had moved for bail, the two opposite parties should have been taken into custody. Instead, they were allowed to remain at large and when they were free and were not in custody, an order for their release on bail was passed. This had been done in flagrant violation of Section 439(1) of the Code. Besides, the fact that these two opposite parties had absconded for a period of three months after the occurrence should have heavily weighed with the Court apart from the gravity of the commission of offences alleged against them.

18. As regards the other two opposite parties, namely, .Bhagaban and Nabaklshore, their application for ball Under Section 439(1) of the Code had earlier been rejected on mrerits at the stage of investigation. The completion of investigation and the placing of a charge-sheet after finding frima facie materials against them could not be additional circumstances in their favour for the grant of bail. The Supreme Court has ruled in AIR 1978 SC. 527 Babu Singh and Ors. v. State of Uttar Pradesh, that the refusal of ball on and earlier occasion does not bar a fresh application being made on a latter occasion giving more details, further development and different considerations. An interim direction is not conclusive adjudication and up-dated re-consideration is not overturning an earlier negation, as observed therein. When an application for bail has been rejected oh merits on one occasion, there should be some further developments or additional materials to justify an order admitting an accused to bail, In this connection, reference may be made to the view taken by this Court in 57(1984) CLT 394 : D. Danda @ Dandapani and Ors. v. State of Orissa. This Court has observed and held :

> "Earlier, this Court has refused the prayer of the petitioners to admit them to bait. That was, no doubt, at the stage of investigation, but the fact that a charge-sheet has now been placed does not Improve the position of the petitioners and this cannot be given weightage In their favour, as urged before us. On the other hand, the placing of a charge-sheet Would indicate that the investigating agency has found out materials against the petitioners to connect them with the commission of the offences. Whether the materials gathered against the petitioners are to be accepted as a matter to be gone into at the stage of trial. It may not appropriately be said at this stage that there are no materials to connect the petitioners with the commission of murder. No new or additional grounds have been made out by the petitioners. There are no additional materials to admit the petitioners to bail although their application had been rejected by this Court earlier We see no new developments to take a view different from the one taken by this Court earlier."

There were no new or additional grounds justifying the grant of bail to the two opposite parties Bhagaban and Nabakishore after their application for bail had earlier been rejected on merits.

19. The learned counsel for the opposite parties has strenuously urged that regard being had to the principles laid down by the Supreme Court in the matter of cancellation on bail and grant of bail to persons accused of commission of non-bailable offences in AIR 1984 Supreme Court 372 (supra) on which reliance has been plated by the learned Sessions Judge, it cannot be said that bail had improperly been granted to the opposite parties in this case. In, the aforesaid reported case, Their Lordships were dealing with cancellation of bail by the High Court of Gujarat in a case of attempt to commit murder punishable Under Section 307 of the Indian Penal Code. The Supreme Court has observed and held :

> "...Very cogent and overwhelming circumstances are necessary for an order Seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material

considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

20. The offences in the instant case are graver and more heinous in nature. From what has been quoted above, it may not be construed that the Supreme Court has laid down that in every case, however grave and heinous be the offences, bail is to be granted even if there be a prima facie case unless there is apprehension that the accused would not readily be available for the trial or that there is likelihood of his abusing the discretion granted in his favour by tampering with the evidence. Even as observed therein, the Supreme Court would certainly have overlooked the aforesaid considerations if the approach of the learned Judge of the High Court was otherwise one which could commend to Their Lordships. If the view of the aforesaid case of the Supreme Court is construed wrongly, as has been done by the learned Sessions judge in the instant case, countless persons accused of examination of heinous offences like murders and dacoities with murders would all be released on bail if there be no circumstances appearing against them that they are likely to abscond or tamper with the prosecution evidence.

The basic rule may perhaps be tersely put as bail, not Jail, as observed in AIR 1977 S. C. 2447 State of Rajasthan v.. Balchand and also in AIR 1984 S. C. 372 (supra), but each case would depend on its own facts and circumstances regard being had to the nature and gravity of the offences and the circumstances attending it.

21. It has been held by the High Court of Gujarat in 1977 Cri. L. J. 104 The State of Gujarat v, Hiraslrigh Kesarisingh Solanki that the statutory language employed In Section 430(2) of the Code is clear to come to a conclusion that the Court of Session can direct any person who has been released on bail to be arrested and commit to custody and no fetter is put on the powers to cancel bail by the statutory language employed in the section. It is not essential that unless there are some new circumstances taking place subsequent to the offender being released en bail, that the Court of Session cannot direct the arrest of the offender and commit him to custody. To read Sub-section (2) of Section 439 of the new Code in such a manner would be an obvious and perverse reading of the section and such a reading of the section would result in grave and patent miscarriage of justice.

As held by the Kerala High Court in 1984 (II) Crimes 327 (supra), a bail order granted by a Sessions Judge improperly should be cancelled by the High Court Under Section 439(2) of the Code. Bail arbitrarily granted by the Sessions Judge in a case of murder and conspiracy although there was a prima facie case and can be cancelled by the High Court, as held by the Rajasthan High Court in 1984 Cri L J. 117 Imamuddin v. Ayub Khan and others.

22. It has been urged on behalf of the opposite parties that after the impugned orders have been passed on April 4, 1986, the opposite parties have been on bail for nearly five months and there is no allegation against them that in the meantime, they have abused their liberty and therefore, no order

cancelling their bail should be passed. In this connection, our attention has been invited to a decision of this Court in 1984 Cri L. J. 905 (supra).

23. In the instant case, some time has been taken by this Court in hearing the application for cancellation of bail after they have been made to this Court. Two of the opposite parties had absconded and bail has been granted to them although they were not in custody. All the four opposite parties are alleged to have committed the murders of two persons in furtherance of their common object. There are materials connecting them with the commission of the offences. In the reported case of this Court referred to above, the person accused of commission of an offence of murder was the Officer-in-charge of a Police Station. A Police Officer similarly placed had been admitted to anticipatory bail. The accused had been on bail for more than six months. It has been observed therein that as a long period of pre-trial detention in the course of investigation or on its completion during the trial is a factor to be taken into consideration while considering an application for bail, it may. not be wrong and improper to take into consideration, among other matters, the land period intervening between the date of release of an accused person and consideration of an application for cancellation of his bail. There was no material to show, as alleged in that case, that after being released on bail, the accused had abused his liberty and had attempted to tamper with the prosecution evidence. The application made by the State for cancellation of bail was rejected, in view of the facts and circumstances of that case and in the absence of compelling and substantial reasons. The facts of the present case are clearly distinguishable in view of what has been stated above.

24. For the foregoing reasons, it must be held that the impugned orders passed by the learned Sessions Judge in the two Criminal Miscellaneous Cases, viz. Criminal Miscellaneous Case Nos. 249 and 250 of 1986 granting bail to the opposite parties smacks of arbitrariness and the orders have been passed not only illegally, but also improperly. In such circumstances this Court has not merely the discretion, but indeed, a duty laid on it Under Section 439(2) of the Code to cancel bail in the interests of justice and order the opposite parties to be re-arrested and kept in custody.

25. For the reasons aforesaid the applications are allowed and the bail granted by the Court of Session to the opposite parties is cancelled with a direction that unless they surrender in the Court and submit themselves to custody, they shall be re-arrested and taken into custody.

P.C. Misra, J.

I agree.