

GAHC010038192021



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : I.A.(Crl.)/132/2021

MOHIB UDDIN LASKAR
S/O LATE MOKTAR ALI LASKAR, R/O VILL-P.O. NARAINPUR, P.S.-
ALGAPUR, DIST-HAILAKANDI, PIN-788155

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:HIFJUR RAHMAN LASKAR
S/O JALAL UDDIN LASKAR
VILL-NORTH NARAINPUR PART-2
P.O.-NORTH NARAINPUR
P.S.-ALGAPUR
DIST-HAILAKANDI (ASSAM)
PIN-788801

3:KUMAR BHASKAR VARMA SANSKRIT AND ANCIENT STUDIES
UNIVERSITY
NALBARI
REPRESENTED BY ITS REGISTRAR
PIN-78133

Advocate for the Petitioner : MR. A Y CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11-03-2024

Heard Mr. T.A. Chaudhury, learned counsel for the petitioner, and Mr. B. Sharma learned Addl. P.P. for the state respondent No.1 and Mr. A. Ahmed learned counsel for the respondent No.2.

2. This application under Section 482 Cr.P.C., read with section 439 (2) of the Cr.P.C., is preferred by the informant of Algapur P.S. Case No. 33/2019, under section 465/468/471/420 IPC, namely, Mahib Uddin Laskar for cancellation of anticipatory bail order, dated **20.01.2020**, passed by this court in Anticipatory Bail Application (A.B.) No. 517/2022 (**Hifjur Rahman Laskar vs. State of Assam**), in above noted case.

3. It is to be mentioned here that vide aforementioned order, dated 20.01.2020, this court was pleased to extend the privilege of pre-arrest bail to the applicant, namely, Hifjur Rahman Laskar.

4. The background facts leading to filing of this petition are adumbrated herein below:-

"On 10.02.2019, the informant/applicant had lodged an FIR against the respondent No.2, with the O/C Algapur Police Station with the allegation that the petitioner had contested for the post of Gaon Panchayat President in the Panchayat Election held in month of December 2018, by submitting false and fake passed certificate of Sanskrit Praveshika Examination, 2014 from Assam Sanskrit Board and thereafter elected to the post of President of North Narayanpur Gaon Panchayat.

Upon the said FIR the O/C Algapur P.S. Had registered a case being Algapur P.S. Case No. 33/2019 dated 10.02.2019 under section 465/468/471/420 IPC.

Then apprehending arrest, the respondent No.2 had filed one pre-arrest bail application, being A.B. No. 517/2019. Thereafter, hearing the parties and perusing the case diary this court, vide order 20.01.2020, ultimately, was pleased to grant the privilege of pre-arrest bail to the respondent No.2.

The petitioner, being the informant, had entered appearance in the said petition and had filed objection petition. After disposal of the said application, the petitioner had examined all the documents filed by the respondent No.2 in his additional affidavit, dated 18.09.2019, and then suspicion creeps in his mind about the genuineness of RTI reply which the respondent No.2 had enclosed with the additional affidavit dated 18.09.2019, (**Annexure-2 on the petition at page 53**).

Thereafter, the petitioner had filed one representation to the respondent No.3, on 31.08.2020 for authentication and after through verification the RTI reply dated 16.07.2019 submitted by the respondent No.2 was found to be forged. The respondent No.3 also provided to him the original RTI reply dated 16.07.2019 (**at page 58 of the petition**) with the reply which certified fraudulent act of the respondent No.2.

From the RTI reply dated 21.09.2020 it becomes clear that the respondent No.2 had obtained the bail order dated 20.01.2020 in A.B. No.517/2019 by deceiving/misrepresenting and suppressing the material facts before this court with the help of forged document i.e. Annexure-6 at

page 50. Therefore it is prayed for cancellation of the order dated 20.01.2020 in A.B. No. 517/2019, and to take the respondent No.2 into the custody."

5. Mr. T.A. Chaudhury, learned counsel for the petitioner submits that the respondent No.2, while obtaining pre-arrest bail had practiced fraud upon the court. Mr. Chaudhury had pointed out that while filing additional affidavit dated 18.09.2019, the respondent No.2 had enclosed one RTI reply, which is found to be forged in view of the reply given to the petitioner by the respondent No.3, pursuant to the representation filed by him for authentication. Referring to the original RTI reply dated 16.07.2019, Mr. Chaudhury submits that the RTI reply which was enclosed with the additional affidavit by the respondent No.2 is forged and as he obtained pre-arrest bail on the basis of forged documents, the same is liable to be set aside and the pre arrest bail order, dated 20.01.2020, in A.B. No. 517/2019 may be cancelled and the respondent No.2 may be taken into custody.

6. In the same vein, Mr. Sharma, the learned Addl. P.P. submits that as the pre-arrest bail was obtained by submitting forged documents, the same may be set aside and quashed.

7. Whereas, Mr. A. Ahmed, learned counsel for the respondent No.2 submits that this petition becomes infructuous in as much as the investigation of the case has already been completed and the I.O. has laid charge sheet, being charge sheet No. 130/2023 dated 30.10.2023 under section 465/468/471/420 IPC against the respondent No.2. Mr. Ahmed further submits that what has been pointed out by the learned counsel for the petitioner is a matter of trial and now

trial will start before the learned trial court. And that after grant of pre-arrest bail, there is no complaint of violating any of the condition and that the respondent No.2 will appear before the learned court below and apply for regular bail. Mr. Ahmed further submits that there must be overwhelming circumstances to cancel bail and the same are absent here in this case, and therefore, Mr. Ahmed has contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have gone through the documents placed on record.

9. Before directing to discussion in to the point, it would be appropriate to discuss some of the case laws relating to cancellation of bail so as to deal with the present petition with greater precision. In **Gurcharan Singh vs. State (Delhi Administration)**, reported in (1978) 1 SCC 118, the Hon'ble Supreme Court clarified the position as under:

“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 must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial, after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows

from the subordinate position of the Court of Session vis-a- vis the High Court."

10. Subsequent judgments have forward this discussion and differentiated between cases where cancellation of bail is sought on the basis of supervening circumstances, which arise from facts which happen after the order granting bail was given, or facts which were not before the judge while passing order granting bail and cases where cancellation of bail is sought on the ground that order granting bail is illegal or perverse.

11. Thereafter, in the case of **Myakala Dharmarajam & Ors. Vs. the State of Telangana & Anr. [(Criminal Appeal Nos. 1974-1975 of 2019) arising out of SLP (Crl.) Nos. 8882-8883 of 2019]**, Hon'ble Supreme Court held that as under:

"It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."

12. In **Raghbir Singh vs. State of Bihar**, reported in **(1986) 4 SCC 481**, it has been held by the Hon'ble Supreme Court that bail can be cancelled where:

- (i) the accused misuses his liberty by indulging in similar criminal activity,
- (ii) interferes with the course of investigation,
- (iii) attempts to tamper with evidence or witnesses,

(iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation,

(v) there is likelihood of his fleeing to another country,

(vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency,

(vii) attempts to place himself beyond the reach of his surety, etc.

13. It is also held by the Hon'ble Supreme Court that these grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

14. Keeping the above principles, so laid down by the Hon'ble Supreme Court in mind, in connection with cancellation of bail, now an endeavor will be made to find out whether the informant has been succeeded in establishing a case for cancellation of bail or not.

15. Here in this case, admittedly, no supervening circumstances have arisen after granting of the privilege of pre-arrest bail. There is also no allegation of misusing his liberty by indulging in similar criminal activities by the accused, nor there is any allegation of interferes with the course of investigation, nor there was any attempts to tamper with evidence or witnesses, nor he had threatened witnesses or indulged in similar activities which would hamper smooth investigation. There is also no likelihood of his fleeing to another country, or there is any attempt to make himself scarce by going underground or becoming unavailable to the investigating agency, or there is any attempts to place himself

beyond the reach of his surety, etc.

16. The petitioner has approached this court for cancellation of the pre-arrest bail order dated 20.01.2020, in A.B. No. 517/2019, only on the ground that in the additional affidavit dated 18.09.2019, the respondent No.2 had enclosed one RTI reply, which is found to be forged in view of the reply given to the petitioner by the respondent No.3, pursuant to the representation filed by him for authentication.

17. But, it appears that, this court, while extending the privilege of pre-arrest bail to the applicant vide order dated 20.01.2020, in A.B. No. 517/2019, had taken note of the fact that there was some difference between the documents filed by the respondent No. 2 and by the petitioner. But, *prima-facie* this court was satisfied that the respondent No.2 has produced some documents from the appropriate authority obtained by RTI which indicates that the respondent No.2 had appeared against Roll No. 3749 and also passed in third division and authenticity of the said documents could not be challenged by the evidence collected by the I.O. nor even by the informant. Further, it appears that this court had also perused the case diary produced by the learned Addl. P.P. And thereafter, considering the entirety of the matter extended the privilege of the pre-arrest bail to the respondent No2. It is incorrect to say that only on the basis of the RTI reply filed by the respondent No.2, with his additional affidavit, this court had granted the privilege of pre-arrest bail.

18. It is well settled that granting bail is a different matter and cancelling the bail is a different matter. Bail can be cancelled on the grounds discussed herein above. But, here in this case, none of the aforementioned conditions have been

fulfilled so as to cancel the bail. There is no material to show violation of any conditions and arising of any supervening circumstances.

19. Thus, considering the submissions of the learned Advocates of all the sides, and further considering the principles of law laid down in the cases discussed above, and balancing the valuable rights and personal liberty of the respondent with that of the societal interest, this court is of the view that the petitioner has failed to make out even a prima-facie case to recall/cancel the privilege of interim bail granted to the respondent, vide order dated 20.01.2020, in A.B. No. 517/2019.

20. In the result, I find this petition, under Section 439(2), read with section 482 Cr.P.C, devoid of merit and accordingly, the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant