

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.PETN. NO.46/2016

Smti. Rahima Khatun,
W/O. Md. Matsiju Islam,
Resident of South Ramnagar,
PEC Batta, PS-West Agartala,
PO-Ramnagar,
District:-West Tripura.

..... **Informant-Petitioner.**

-: Vrs. :-

1. **Sri Panna Ahamed,**
S/O. Md. Ayat Ali,
Resident of South Ramnagar,
PEC Batta, PS-West Agartala,
District:-West Tripura.
2. **The State of Tripura,**
Represented by the Secretary to the
Government of Tripura,
Home Department, Agartala.

..... **Respondents.**

B E F O R E
HON'BLE THE CHIEF JUSTICE

Counsel for the petitioner : Mr. A.K. Bhowmik, Sr. Advocate,
Ms. M. Choudhury, Advocate,
Mr. D. Kar, Advocate,
Mr. S. Dey, Advocate.

Counsel for the respondents: Mr. A. Ghosh, P.P.,
Mr. A. Bhattacharjee, Advocate,
Mr. P. Saha, Advocate,
Mr. R. Mukherjee, Advocate,
Mr. R. Sinha, Advocate.

Date of hearing : 27-01-2017.

Date of Judgment & Order : **31-01-2017**

JUDGMENT & ORDER

The perennial question of bail or jail is once again confronting this Court in this criminal petition filed by the alleged victim of rape. The petitioner in this criminal petition is seriously questioning the legality of the order dated 17-10-2016 passed by the learned Sessions Judge, West

Tripura in Bail Application No. 255 of 2016 granting bail to the accused-respondent and is seeking the cancellation thereof.

2. At the outset, Mr. A. Bhattacharjee, the learned counsel for the accused-respondent, has raised a preliminary objection as to the maintainability of the criminal petition on two grounds, namely, (i) the petitioner, who is the victim of rape, has no *locus standi* to file the case and it is the State, which alone has the authority to file such petition and (ii) there is a specific provision for cancellation of bail under Section 439(2) CrPC; Section 482 CrPC cannot be invoked. In my opinion, in the light of the recent decision of the Apex Court in ***Gulabrao Baburao Deokar v. State of Maharashtra, (2013) 16 SCC 190***, there can no be any dispute that an application for cancellation of bail at the behest of the victim of the crime is maintainable and that there is no bar in invoking Section 482 CrPC for cancellation of bail by her. This is what the Apex Court said:

“29. We must note one more objection raised on behalf of the appellant, namely, that Respondents 2 to 4 had no locus to file an application seeking cancellation of bail. It is contended that Respondents 3 and 4 had not even filed any application before the trial court. They later on joined Respondent 2 to move the High Court by filing SLP (Crl.) application to quash and set aside the order granting bail. Mr Marlapalle, learned Senior Counsel and Ms Kamini Jaiswal learned counsel appearing for these respondents pointed out in reply that the criminal application filed in the High Court was moved under Section 439(2) read with Section 482 CrPC. Para 2 of the said criminal application stated as follows:

“2. The applicants submit that they are residents of Jalgaon. They are citizens of India. They are taxpayers. They are beneficiaries of various policies and amenities provided by the Municipal Corporation to the citizens of Jalgaon. The applicants are victims of the offence committed by Respondent 2 along with other accused. The applicants have *locus standi* to seek the cancellation of the bail granted to Respondent 2 and the other accused persons.”

30. It was submitted by the learned counsel that Respondent 2 had appeared before the Sessions Judge to assist the prosecution, which is recorded in the order passed granting bail. As far as filing of the aforesaid criminal application before the High Court by Respondents 2 to 4 is concerned, the same has not been specifically objected to in the High Court, and therefore, there was no occasion for the High Court to look into any such objection. Now, this objection is being raised in this Court. The learned counsel submitted that Respondents 2 to 4 had invoked the inherent jurisdiction of the High Court under Section 482 CrPC, and the power of the High Court to entertain such an application has been upheld by this Court in para 17 of **Puran v. Rambilas**⁷. In that matter bail had been granted by the Sessions Court, and the bail order was cancelled by the High Court, not on any petition by the State, but on one filed by the complainant invoking Sections 439(2) and 482 CrPC.

31. In our view the objection raised by the appellant cannot be sustained in view of what is observed by this Court in para 17 in **Puran v. Rambilas**⁷ which reads as follows: (SCC p. 347)

“17. Further, even if it is an interlocutory order, the High Court’s inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. *It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified (Madhu Limaye v. State of Maharashtra*¹² and *Krishnan v. Krishnaveni*¹³).”

3. Coming now to the merit of the case, it is the contention of Mr. A.K. Bhowmik, the learned senior counsel for the petitioner, that the learned Sessions Judge should not have granted bail after having satisfied himself that there is a strong prima facie case against the accused simply because

⁷ (2001) 6 SCC 338

¹² (1977) 4 SCC 551

¹³ (1997) 4 SCC 241

he would not abscond or he is an employee of the Government of Tripura or has a family at Agartala, where he has a permanent residence or the important witnesses would not be afraid of the accused. Drawing my attention to the prayer for custodial trial made by the Deputy Superintendent of Police (CAW) West Tripura to the Judicial Magistrate Ist Class, Court No. 6, Agartala, in his application dated 24-8-2016 and the report dated 2-12-2016 of the Sub-Inspector of Police, Sonamura submitted to the Executive Magistrate for binding the accused over to keep the peace U/s 107 CrPC, the learned senior counsel submits that the bail order is not only perverse but the accused has misused the liberty the bail granted to him by threatening the complainant thereby making a mockery of criminal justice system. Submitting that the bail order is an abuse of process of court and will lead to obstruction of justice, the learned senior counsel vehemently urges this Court to cancel the bail. In support of his contentions, the learned senior counsel relies on the decision of the Apex Court in ***Subodh Kumar Yadav v. State of Bihar, CDJ 2009 SC 1430***.

4. Refuting the submissions of the learned senior counsel for the petitioner, Mr. A. Bhattacharjee, the learned counsel for the accused-respondent, contends that the bail order was passed by the learned Sessions Judge after taking all aspects into consideration; not a single factor has been left out of consideration by him. A well-reasoned order such as the one herein, according to the learned counsel, cannot be assailed or interfered with. He reminds this Court that the power of cancellation of bail should be exercised with care and circumspection inasmuch as cancellation of bail jeopardizes the liberty of a person. He submits that there is absolutely no evidence to show that the accused has violated any of the bail conditions warranting the extreme measure of bail cancellation, the violation whereof alone can entail cancellation of the bail. He also argues that bail is the rule and jail is the exception and when in our criminal jurisprudence, a person is presumed to be innocent until he is proved guilty, cancellation of bail of the accused, on the available materials on

record, will fall foul of this dictum. To fortify his contentions, he takes me to the decisions of the Apex Court in ***Bhagirathsinh Judeja v. State of Gujarat, AIR 1984 SC 372 and Sanjay Cjandra v. CBI, AIR 2012 SC 830.***

5. I have given my earnest consideration to the rival submissions advanced by the learned counsel for the parties except the learned Public Prosecutor, who, curiously, has chosen not to make any submission. No wonder, the victim herself has to file this criminal petition. Before proceeding further, I must remind myself that the concept of setting aside an unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. The Apex Court in ***Masroor v. State of U.P., (2009) 14 SCC 286*** has laid down the following salutary principles, which cannot be ignored by courts in considering the application for cancellation of bail:

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in ***Shahzad Hasan Khan v. Ishtiaq Hasan Khan***⁵ are quite apposite:

“6. ... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose

⁵ (1987) 2 SCC 684

faith in the institution and indulge in private retribution.”

6. Therefore, in the case at hand also, the question for consideration is whether, having regard to the nature of the offences the accused-respondent has been charged with, the background in which the offences were committed and the stage of the trial, the learned Sessions Judge was justified in granting bail to the said respondent and set him free? The principles for cancelling bail have been reiterated by the Apex Court in **Masroor case** (*supra*) in the following manner:

“12. Normally this Court does not interfere with the order of the High Court relating to grant or rejection of bail but in the instant case, having carefully gone through the impugned order, we are constrained to observe that the High Court has completely ignored the basic principles which are to be kept in view while dealing with an application filed under Section 439 of the Code for grant of bail and has thus, committed a manifest error in the matter of grant of bail to the second respondent, warranting interference by this Court.

13. It is trite to state that the court granting bail has to exercise its discretion in a judicious manner with care and caution and not as a matter of course. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.

14. “11. ... Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

7. In the instant case, the learned Sessions Judge recorded his satisfaction that there is a strong prima facie case with respect to the charges against the accused-respondent, but has nevertheless granted him bail by completely overlooking the nature of accusation, the severity of punishment in case of conviction and the nature of supporting evidence and reasonable apprehension that he may temper with the evidence or intimidate the petitioner or the witnesses. Though the L.C. record was examined by the learned Sessions Judge, he did not give due consideration to the said prayer of the I.O. of the case for custodial trial of the case, which was made on the grounds that:

- 1) The accused who is a senior Government official with wide contact network would threaten the petitioner, her family members as well as vital witnesses through various means;
- 2) If the accused is released on bail, there would be problem in the area as it is heinous crime against a mother of two children opening a flood gate of agitation and rallies throughout the State;
- 3) There is every possibility that he might take shelter in Bangladesh or outside the State and it would not be possible to ensure his attendance in Court;
- 4) If he is enlarged on bail, his presence cannot be ensured at the time of trial as evident from his abscondence for two weeks just after registration of the case against him.

8. Considering the gravity of the offences alleged against the accused-respondent, the evidence collected during the investigation, the punishment likely to be inflicted upon him if he is convicted and the apprehensions expressed by the IO of the case that there is every possibility of him threatening the prosecution witnesses as well as the petitioner herself and of the possibility of his jumping the bail, the granting of bail by the learned Sessions Judge to him for the reasons stated in his bail order is highly improper and perverse, more so, when he found a strong prima facie case

against him. His confidence that the accused would not temper with the evidence has now been belied by his subsequent conduct of intimidating the petitioner and by the recommendation made by the police for drawing up a proceeding against him under Section 107 CrPC. Even if the grant of bail by the learned Sessions Judge is not liable to be interfered with by this Court as he was exercising his discretionary power, the subsequent development referred to earlier cannot be ignored by this Court while considering the question of cancellation of bail. In my judgment, on the materials available on record, allowing the accused to remain on bail will result in miscarriage of justice. In other words, fair trial of the case cannot be guaranteed and is rather likely to be compromised by his remaining on bail. There must be custodial trial of the accused at least till the time the main prosecution witnesses are examined and discharged.

9. For the reasons stated in the foregoing, the impugned bail order dated 17-10-2016 is hereby set aside. The bail-bonds of the accused-respondent stand cancelled. The Officer-in-Charge of Sonamura Police Station shall take the accused-respondent into custody forthwith. Needless to say, nothing stated in the foregoing shall be construed as an observation on the merit of the case, which is yet to be decided independently by the trial court. Transmit the L.C. record.

CHIEF JUSTICE