

CASE NO.:
Appeal (crl.) 936 of 2004

PETITIONER:
Samarendra Nath Bhattacharjee

RESPONDENT:
State of West Bengal & Anr.

DATE OF JUDGMENT: 25/08/2004

BENCH:
N.Santosh Hegde, S.B.Sinha & G.P.Mathur

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.)No.2039 of 2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The appellant herein was an accused in a case involving offences punishable under Sections 498A/405/419/420/467/469/471/120B of the IPC before the Court of learned ACJM at Sealdah. On 27th of August, 2002, he was produced in custody by the police concerned when he moved a bail application alleging that he was suffering from various ailments like cardiac and diabetic problems. The learned Public Prosecutor opposed the bail paper and alleged that in the event the appellant being released on bail there is a possibility of his tampering with the evidence. It is to be noticed that the prayer of the Investigating Officer was not for police remand but was to take the appellant into judicial custody.

Learned Judge after perusing the FIR and the case diary and taking into consideration the age and the ailments of the appellant considered it appropriate to release the appellant on bail of Rs.2000/- with two sureties of Rs.1000/- with the condition not to enter the place of his residence and to furnish affidavit giving particulars of the residence where he intends to reside. He also directed the appellant not to tamper with the evidence and meet the I.O. thrice a week that is on Monday, Wednesday and Friday until further orders and further directed him to meet the Officer-in-Charge of the local police station where he intended residing once a week and not to leave the jurisdiction of the local police station where he intended residing. Based on the said order, the appellant was released on bail. Subsequently, on an application made for modification of the terms and conditions of the said bail, the condition prohibiting him from not residing in his residence was deleted by the learned Magistrate as per his order dated 4th of October, 2002.

Thus it is noticed that the appellant has been on bail since 27th of August, 2002.

Being aggrieved by the order of granting bail to the appellant, the complainant moved an application purporting to be under Section 439(2) read with 482 of Cr.P.C. before the High Court at Calcutta for cancellation of bail. In the said application it was contended at para 8 of the petition that the appellant was regularly threatening through unidentified persons the members of the family of the complainant and forcing them to withdraw the complaint failing which the complainant and her family members

would be abducted and even murdered.

The High Court by the impugned order considered it appropriate to cancel the bail by the impugned order dated 28th of April, 2003 and it is against the said order of cancellation of bail, the appellant has preferred the above appeal.

This Court while entertaining the special leave petition at the stage of mentioning on 8.5.2003 had taken the matter on board and issued notice and stayed the order of the High Court. It also directed that the bail granted by the trial court shall continue until further orders.

Shri Ranjit Kumar, learned senior counsel appearing for the appellant submitted that the High Court practically went into the merits of the original complaint itself and decided the bail application which will certainly prejudice the appellant's trial. He also submitted that the court did not bear in mind the grounds necessary for canceling the bail which the learned counsel pointed out are different from the grounds that are relevant to be considered at the time of granting the bail. He also pointed out the observation of the High Court that the trial court did not peruse the case diary before granting the bail was factually incorrect as could be seen from the original order granting bail and the further observation of the court that a bail ought not to have been granted on the very first date of hearing is also an erroneous ground for canceling the bail. The further submission of the learned counsel in support of this appeal is that one and the only ground that could be considered as a relevant ground for the purpose of canceling the bail as found in para 8 of the application for cancellation of bail is that the appellant through some unidentified persons has been threatening the complainant and her family. This the learned counsel submits are wholly unsubstantiated allegations without there being any material to establish the same. He also pointed out from the affidavit filed in support of the application for cancellation of bail that the verification of paragraph 8 is stated to be on the basis of record and not based on knowledge and the respondent has not produced any such record to prove the allegations of intimidation. He further submitted that the appellant being an aged person suffering from various ailments is entitled to be enlarged on bail, more so because of the fact that the investigating agency has not made any complaint as to the violation of terms of bail granted to the appellant.

Shri Vijay Hansaria, learned senior counsel appearing for the complainant-respondent strongly supported the order of the High Court canceling the bail and contended that bail ought not to have been granted by the trial court because there were recoveries yet to be made from the appellant. He submitted that the High Court was justified in going into the merits of the case limited for the purpose of deciding the application of cancellation of bail. He also pointed out that the complainant, a young lady, has suffered irreparable damage to her personal life because of the act of the appellant, hence, the court should take serious note of the offence alleged against the appellant.

Having heard the learned counsel and having perused the records of the case, we notice that the trial court after looking into the case diary and other material produced before it and also noticing the fact that investigating agency had only sought judicial remand, and the argument of the possibility of accused tampering with the evidence still taking into consideration the age and ailments of the accused appellant granted bail on stringent condition.

Per contra, the High Court, in our opinion, has approached the case as if it is an appeal against the conviction by giving findings on factual issues which are yet to be decided which, in our opinion, is too premature and is likely to prejudice the trial. For example, this is what the High Court had to observe at one part of

its judgment that:

"She was battered, abused; above all, she was wronged in her castle with which she had unknowingly built with quick sand and ultimately, happiness which she so passionately sought for turned down to be a teasing mirage for her."

This finding, in our opinion, could be construed as a finding accepting the allegation of the complainant which might prejudice the case of the defence, at any rate these findings are unnecessary while considering a petition for cancellation of bail. That apart since the only ground on which the cancellation could have been ordered being the ground of intimidation which, in our opinion, is not satisfactorily proved, the High Court erred in canceling the bail granted to the appellant.

We have deliberately refrained from expressing any opinion on various findings given by the High Court lest our opinion should prejudice the trial, but we make it clear that when the matter goes to trial the trial court also will not take into consideration the observation made by the high Court in the impugned order.

Having considered the factual matrix of this case, we are of the opinion that the respondent has not made out a case for cancellation of the bail and the High Court has erred in doing so. For the reasons stated, this appeal succeeds. The impugned order canceling the bail is set aside and that of the trial court granted bail is restored.

The appeal is allowed.