

(2008) 03 CAL CK 0051
In the Calcutta High Court
Case No : C.R.A.N. No. 154 of 2008

Jatan Das and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 203, 204(4), 362, 397, 398
Penal Code, 1860 (IPC) — Section 120B, 376, 387, 507, 511

Citation : (2008) 2 CALLT 58 : (2008) 4 CHN 781 : (2009) 5 RCR(Criminal) 179

Hon'ble Judges : Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Bijoy Adhikary and K.N. Yadav, for the Appellant; Suhas Majumdar, for the Respondent

Judgement

Kishore Kumar Prasad, J.—The petitioners/accused namely Jatan Das, Smt. Sibud Das, Lalmohan Das and Narayan Das have filed this application for review and/or modification and/or rectification of the order dated 18.1.2008 passed by this Court in C.R.M. No. 489 of 2008 rejecting their prayer for bail in connection with sessions Trial Case No. 4(3) of 2007 arising out of Kakdwip Police Station Case No. 93 dated 4.7.2005 under Sections 376/387/507/511/120B of the Indian Penal Code while considering the bail application of the aforesaid four petitioners along with two others namely Laxmikanta Das and Smt Karunamayee Das, released on bail pursuant to order dated 18.1.2008 passed in CRM No. 489 of 2008.

2. The main submission of the learned Counsel appearing on behalf of the petitioners is that there is mistake of both fact and law by this Court rejecting the bail prayer of the aforesaid four petitioners" because of incorrect submission of the learned P.P. appearing for the State coupled with erroneous observation of the learned trial Judge. According to him, learned P.P. appearing on behalf of the State cannot escape his liability by making statement that he made his submission simply relying on the order of the learned trial Judge while he should

know that it is his basic duty to go through the case diary in the interest of justice and to give exact version of the same before the Court, so that justice delivery system does not turn to disrepute.

3. Per-contra, the learned P.P. appearing for the State contends that there is no factual basis in the submission as made by the learned Counsel appearing for the petitioners and this Court after hearing the learned Counsel for the parties and after perusing the materials from the case diary had passed the order, rejecting the prayer for bail of these petitioners. Learned P.P. vehemently submits that this Court, once having rejected the prayer for bail by order dated 18.1.2008, is not competent to review and/or reopen and/or alter their own order in view of the mandate of the provision of Section 362 of the Code of Criminal Procedure.

4. Having heard the learned Counsel appearing for the parties, we are not at all in agreement with the submission of the learned Counsel for the petitioners that the learned P.P. appearing for the State made incorrect submission before this Court on 18.1.2008 being influenced by the erroneous observation of the learned trial Judge.

5. The law is fairly well settled that Criminal Courts are not vested with the jurisdiction to review and/or to alter their own judgment or final order disposing of the case, except for correcting a clerical or arithmetical error. Section 362 of the Code of Criminal Procedure mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct clerical or an arithmetical error. This, however, is subject to the exception contained in Section 398 of the Code of Criminal Procedure which contemplates that High Court or the Court of Sessions in exercise of powers u/s 397 or otherwise may direct the C.J.M. by himself or by any Magistrate subordinate to him to make, further inquiry into any complaint, which has been dismissed u/s 203 or Sub-section (4) of Section 204 of the Code of Criminal Procedure or into the case of any person accused of an offence, who has been discharged subject to proviso thereto.

6. The order granting or refusing bail cannot be said to a final order for two reasons: first, because such an order is not final in fact. It can be rescinded or modified by the same Court on subsequent occasion; secondly, because this order is not also a final order in law.

7. According to all the authorities the test of finality is that in order to be final, the order should finally terminate the lis or the proceeding or, in other words, it must be on a point which determined either way, would bring the proceeding to an end. It has been uniformly held by all the authorities that an interlocutory order is neither a judgment nor a final order disposing of a case. A summary of all the authorities on the point will be found in two decisions of this Court, namely, *West Jamuria Coal Co. Vs. Bholanath Roy and Others*, and also *Mukunda Das Nandy and Others Vs. Bidhan Chandra Roy*, .

8. An identical question was considered in *Babu Singh and Others Vs. State of*

U.P., . Here the accused were acquitted by the learned Sessions Judge for the charge of murder and the appeal against the acquittal preferred by the State was allowed and the accused were convicted. They preferred an appeal before the Supreme Court and also moved an application for bail which was rejected. Thereafter they filed a second application for bail. The Court observed as follows in para 2 of the reports (at page 528 of AIR):

Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.

9. In view of above authoritative pronouncement by the Apex Court which is binding under Article 141 of the Constitution, it cannot be held that second application for bail by way of interlocutory relief is not maintainable in law. In the same judgment, the Supreme Court also emphasised the factors which have to be kept in mind while granting bail to an accused and the relevant part of para 13 of the reports is being reproduced below:

Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible into the case. As Erie, J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting that no "amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged.

10. Judged by this test, an order granting or refusing bail cannot be a final order; it is merely an interlocutory order and, therefore, the mandate of Section 362 of the Code of Criminal Procedure can have no application to rejection of a bail application.

The application under consideration is not against any judgment or final order

disposing of a case rather it is against an interlocutory order of partial rejection of bail passed by this Court with prayer to pass an appropriate order of granting bail to these petitioners for the ends of justice in view of the change in the fact situation including their long detention behind the prison bar since 6.5.2007 and 6.7.2007. Successive bail application before the same Bench is permissible where there being a change in the fact situation.

11. On the prayer as made in the application, we may treat the same as an application for bail in view of the change in the fact situation. It is an admitted position that these petitioners are behind the prison bar since 6.5.2007 and 6.7.2007. It is true that the conduct of the petitioners is not satisfactory but there is no immediate prospect of trial. It is difficult to say how much time the trial will take to conclude. That apart, the petitioners have greatly suffered on account of their detention in custody for their conduct to misuse the liberty of granting bail initially.

12. Is Considering the totality of these facts, we think that another opportunity should be given to these petitioners for rectification of their conduct.

16. Accordingly, the petitioners/accused namely Jatan Das, Smt. Siblu Das, Lal Mohan Das and Narayan Das may find bail of Rs. 5,000/- each with two sureties of Rs. 2,500/- each to the satisfaction of learned Additional Sessions Judge, Fast Track 1st Court, Baruipur, 24 Parganas (South) on condition that they shall diligently face the trial and in default even on one occasion to the satisfaction of the learned trial Judge, this bail shall stand automatically cancelled. The application being CRAN No. 154 of 2008 is, thus, disposed of. Urgent certified copy of this order, if applied for, be supplied to the learned Counsel for the parties on compliance of all formalities.

Girish Chandra Gupta

17. I agree.