

(1973) 12 CAL CK 0004
In the Calcutta High Court
Case No : Criminal Rev. No. 1071 of 1973

Superintendent and Remembrancer of Legal Affairs	APPELLANT
Vs	
Amiya Kumar Roy Choudhury alias Dadaji	RESPONDENT

Date of Decision : 17-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 491, 497, 497(5), 561A
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471

Citation : 78 CWN 320 : (1974) 1 ILR (Cal) 304

Hon'ble Judges : N.C. Talukdar, J; A.N. Banerjee, J

Bench : Division Bench

Advocate : Rajesh Chandra Ghosh, D.L.R. and Promode Ranjan Roy, for the Appellant; N.C. Banerjee, Prasun Chandra Ghosh, Bidyul Kumar Ghosh and Prabhjot Singh, for the Respondent

Judgement

N.C. Talukdar, J.—This Rule is at the instance of the Superintendent and Remembrance of Legal Affairs, Government of West Bengal, on behalf of the State of West Bengal, for cancelling an order of bail dated December 13, 1973, passed by Sri S. Ahmed, Sessions Judge-in-charge, Alipore, district 24-Parganas, in favour of the accused-opposite party, Amiya Kumar Roy Choudhury alias Dadaji, and for directing the accused-opposite party to be remanded to Police custody instead of jail -custody as was ordered by Sri S. N. Som, Police Magistrate, Alipore, on December 11, 1973.

2. The facts leading on to the Rule can be put in a short compass. The accused-opposite party was arrested by the Police on December 11, 1973, in connection with the Tollygunge P.S. Case No. 734, dated September 14, 1973, under, Sections 120B/420/467/471, Indian Penal Code, and was produced before the learned Police Magistrate at Alipore on the same date. The co-accused Sm. Anjali Banerji was allowed bail, but the prayer for bail pressed on behalf of the accused-opposite party was rejected. The learned Police Magistrate by the same order remanded the accused-opposite party to jail custody till December 24, 1973. A

revisional application, therefore, was preferred by the accused-opposite party before the learned Sessions Judge at Alipore and Sri S. Ahmed, Sessions Judge-in-charge, Alipore, by his order dated December 13, 1973, admitted the application, called for the records of the lower Court as well as the record of T.S. No. 38 of 1973 of the Third Court of the Subordinate Judge, Alipore, and also the memo, of evidence, if any. By the same order he allowed the prayer for interim bail and directed the accused-opposite party to be released on a bail of Rs. 10,000 with two sureties of Rs. 5,000 each, to the satisfaction of the learned Additional District Magistrate Judicial, Alipore, on condition that the opposite-party shall confine himself within his own house and shall not move without the permission of the Court, with the further direction that he was to appear in person on the date of hearing before the Court, which was fixed on December 21, 1973. These orders were impugned by the Superintendent and Remembrance of Legal Affairs, West Bengal, and the present Rule was issued on December 14, 1973.

3. Mr. Rajesh Chandra Ghosh, Deputy Legal Remembrancer, State of West Bengal (with Mr. Promod Ranjan Roy, Junior Government Advocate), appearing in support of the Rule made a submission of two dimensions. Firstly, that the order passed by the learned Sessions Judge-in-charge, Alipore, 24-Parganas, has been bad and improper, inasmuch as amongst others, there should have been no interim order passed in an application for bail, arising out of a case involving serious offences, and before finally hearing it; that the conditions imposed on such bail are not also sufficient; that no direction even was given as to how the accused-opposite party was to be interrogated by the I.O.; and that there is no finding at all that the Court was satisfied that there are reasonable grounds for believing that the accused-opposite party is not guilty of any offence coming within the bounds of Section 497, Code of Criminal Procedure, as amended by Section 14(b) of the West Bengal Act IX of 1972. Secondly, that the order passed by the learned Police Magistrate remanding the accused-opposite party to jail custody is also bad inasmuch as he did not allow the prayer made on behalf of the prosecution, to remand the accused-opposite party to Police custody for necessary interrogation and completing the investigation. Mr. N. C. Banerjee, Advocate (with Messrs Prasun Chandra Ghosh, Bidyut Kumar Ghose and Prabhjot Singh, Advocates) appearing on behalf of the accused-opposite party raised a preliminary objection, besides opposing the Rule on merits and controverting the two dimensions of the learned Deputy Legal Remembrancer's contentions. The steps- of Mr. Banerjee's reasoning in support of his preliminary objection are that the Revisional application filed in this Court is not maintainable being a curious amalgam of different sections, some of which are not applicable in a case containing a prayer for cancellation of bail; that the cause title of the application is not also proper inasmuch as such jurisdiction is not Criminal Revisional but Criminal Miscellaneous ; and that as the application before this Court contains several averments of facts it should have been affirmed by a competent person. In opposing the Rule on merits, Mr. Banerjee contended, inter alia, that the order

for bail has been just and fair; that the criticism thereof has been more technical than real; that substantial justice has been dispensed by the learned Sessions Judge-in-charge in allowing interim bail because the accused opposite party is a respectable person living with his family in his house and there is neither any chance of his absconson nor of any interference by him with the pending investigation ; that it should not be overlooked that he did not abuse the indulgence of the interim and conditional bail granted to him that he has been suffering from various ailments and, as such, his detention in jail will be very much prejudicial; and that further- conditions, if deemed necessary, may be imposed on his bail. Mr. Banerjee next contended that, in any event, the order dated December 11, 1973, passed by the learned Police Magistrate, Alipore, cannot be challenged at this belated stage and in this petition which only arises out of an order dated December 13, 1973, passed by the learned Sessions Judge-in-, charge, Alipore, allowing interim bail in an application for bail filed by the accused-opposite party.

4. We will take up, in the first instance, the preliminary objection raised by Mr. Nalin Chandra Banerjee for consideration. It is quite true that applications for cancellation of bail are miscellaneous applications filed u/s 497(5) or u/s 498(2), Code of Criminal Procedure, as the circumstances call for, and that the statements of facts contained in a petition are usually required to be affirmed by affidavit. In, the present case, there is a specific reference to Section 498 though not to Section 497(5), Code of Criminal Procedure/ but merely because other provisions have also been mentioned in the cause title, the same would not vitiate the application or the Rule inasmuch as the ultimate prayers as made are quite specific and clear. Moreover, the Supreme Court itself held in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another, that u/s 561A, Code of Criminal Procedure, the High Court has inherent power to cancel the bail granted to a person, accused of a bailable offence and further observed that such power can be exercised in the interests of justice. As to the other branch of Mr. Banerjee's objection, it is to be noted that the impugned application in the High Court has been filed by the Superintendent and Remembrancer of Legal Affairs to the Government of West Bengal on behalf of the State of West Bengal and, in any event, the ultimate prayer made therein is not necessarily dependent on the averments of facts. The objection raised in this behalf by Mr. Nalin Chandra Banerjee is indeed more technical than real and, on this ground alone, the Rule cannot be discharged. In any event, it should not be overlooked that a Rule has already been issued by the High Court and the entire matter is before it. It has to be noted further that it has been held in several cases that, where the High Court had issued a Rule, the matter should be disposed of on merits and not dismissed on a preliminary objection, if the ends of justice so demand. A reference in this context may be made to the case of Bholanath Dhar and Others Vs. Gour Gopal, where Mr. Justice Sen who delivered the judgment of the Court observed that

it has been held in some cases that where the High Court issued a Rule, the matter should be disposed of on merits. A reference again may be made to the

case of Bon Behari Mondal Vs. Bhusan Chandra Barui and Others, wherein it was held that "law is good, but justice is better".... It was further held therein that practice is but the hand-maiden of law and cannot be allowed to over-ride the latter and be her jealous mistress. The High Court is the palladium of justice and its stream must remain unfettered.

A reference also may be made to the case of Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another, wherein Gajendragadkar J. (as his Lordship then was) delivering the judgment of the Court observed that--

After all, procedure, whether Criminal or Civil, must serve the higher purpose of justice.

We respectfully agree and we hold that there may be much force behind the submissions of Mr. Banerjee in this behalf, but the Rule having been issued and everything being before this Court, we will proceed *ex debito justitiae* to dispose of the Rule on merits. The preliminary objection raised is disposed of accordingly.

5. We will now turn to the merits of the application for cancellation of bail and for setting aside the order for jail custody. We have given our anxious consideration to the submissions made, in this behalf and we find that *prima facie* the order dated December 13, 1973, as passed by the learned Sessions Judge-in-charge, Ali-pore, appears to be not a proper one and leaves room for improvement. In a case of this description, the learned Judge should have fixed an earlier date for the final hearing of the application for bail and proceeded to dispose it of on merits instead of allowing the prayer for interim bail. The conditions imposed again are not sufficient and no direction has been given as to how the accused-opposite party was to be interrogated by the I.O. The functions of the Judiciary and the Police are specific and ear-marked. A reference in this context may be made to the case of King-Emperor v. Khwaja Nazir Ahmed 71 LA. 203 (212-213) wherein Lord Porter observed:

The functions of the Judiciary and the Police are complementary, not overlapping and the combination of individual libeny with a due observation of law and order, is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Code of Criminal Procedure to give directions in the nature of habeas corpus. The bounds of such an interference have undoubtedly been expanded by the recent decision of the Supreme Court in the case of S.N. Sharma Vs. Bipen Kumar Tiwari and Others, wherein it was observed by Bhargava J., delivering the judgment of the Supreme Court, that though the Code gives to the Police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy in invoking, the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a Police officer *mala fide*, the High Court can always issue a writ of mandamus restraining

him from misusing his legal powers. Subject to this intervention, the powers of the Police at the stage of investigation should not be interfered with or made unnecessarily difficult. The learned Deputy Legal Remembrance pinpointed that in view of the nature of the offences alleged and also in view of the field of investigation which is wide enough, reasonable facilities must be given to the investigating officer to have proper interrogation so that "the investigation may be completed within a short time. There is a considerable force, therefore, behind Mr. Ghosh's submissions and one looks in vain to the impugned order for any directions relating to the pending investigation. To crown all, there is no finding of all by the learned Sessions Judge-in-charge that he was satisfied that there are reasonable grounds for believing that the accused-opposite party is not guilty of any offence coming within the ambit of Section 497, Code of Criminal Procedure, as amended by Section 14(b) of the West Bengal Act IX of 1972. These are some of the defects of the impugned order, but by themselves these are not sufficient to warrant a cancellation of bail in a case where it has been granted on conditions imposed. On ultimate analysis, the same will depend on several other considerations, including the grounds of expediency, balance of convenience and of justice.

6. The Law of Bails, which constitutes an important branch of the procedural law, is not a static one; and in a welfare State it cannot indeed be so. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the "fundamental canon of Criminal Jurisprudence, viz. the presumption of innocence of an accused till he is found guilty. These are indeed conflicting equities highlighting the Law of Bails but the shield in no case should be allowed to be the sword. The observations aptly made that "in a barbaric society you can hardly ask for bail; in a civilised society you can hardly refuse it"--are more than an epigram, subject only to the tests or considerations laid down from time to time by the imprimatur of judicial decisions. On an overall consideration, therefore, the order for bail, as granted by the learned Sessions Judge-in-charge, Alipore, should not be cancelled merely because of the defects referred to above, but in the interests of justice we will have to consider the different facets of submissions on merits advanced on behalf of the accused-opposite party in support-of the order of bail.

7. Mr. Banerjee appearing on behalf of the accused has made a three-fold submission in this context. The first one is that the accused-opposite party is a respectable person living in his house with the members of his family and there is no chance of his absconsion or interference with the pending investigation. More so, when various conditions have already been imposed on his bail ruling out any such apprehension. The learned Deputy Legal Remembrance joined issue and contended that interrogations on material points have to be made, and for completing the investigation properly and expeditiously, the accused-opposite party should be. remanded to Police custody. This by itself, however, is not a

sufficient ground and the apprehended prejudice can be obviated by imposing proper conditions on the bail of the accused opposite party and by giving due opportunity to the Investigating Officer for interrogations. The next submission on merits by Mr. Banerjee is that the accused-opposite party did not abuse the indulgence when granted interim bail by the Court below. On this point there is no demurrer on the part of the State. The last contention on merits made on behalf of the accused-opposite party is that he has been suffering from various ailments requiring proper medical attention and, as such, his further detention in jail will only operate to his prejudice. The learned Deputy Legal Remembrance in his reply submitted that such ailments can well be attended to in the jail hospital, if so required. We are unable, however, to agree with the submissions made in this behalf by the learned Deputy Legal Remembrance. Cancellation of an order for bail is an extraordinary order and can only be based, on the tests laid down by the imprimatur of judicial decisions on the point. A reference in this connection may be made to the cases of *Johurmull and Ors.* 30 C.W.N. 1093, *Emperor v. Jiwani Lal Gauba* 37 Cr.LJ. Q37 and *The Public Prosecutor Vs. George Williams alias Victor*, . There is even no allegation upto now that the accused-opposite party has misused the liberty granted. We ultimately hold that the order for bail as granted by the learned Sessions Judge-in-charge, Alipore, need not be cancelled at this stage but proper and reasonable conditions should be imposed on the same to ensure a proper investigation. The first dimension of the learned Deputy Legal Remembrance's contentions on merits is accordingly disposed of.

8. The second dimension, however, of the contentions raised on behalf of the State is not per se maintainable, viz. that the order-passed by the learned Police Magistrate, Alipore, on December 11, 1973, should be set aside and the accused-opposite party be remanded to Police custody, as prayed for on behalf of the prosecution, for necessary interrogation and completing the investigation. In the first place, the said order was not even impugned on behalf of the State before the learned Sessions Judge, Alipore; and secondly, it is only being challenged at a belated stage and that too in the context of an application for cancellation of bail arising out of a subsequent order passed by the learned Sessions Judge-in-charge, Alipore, on December 13, 1973. The second dimension also of the learned Deputy Legal Remembrance's contentions on merits accordingly fails.

9. In the result, the prayer for cancellation of bail is not allowed, but we modify the order of bail passed by the learned Sessions Judge-in-charge, Alipore, 24-Parganas, as follows:

(a) That the accused-opposite party shall not go out but remain in his residence at 188/10A, Prince Anwar Shah Road, Calcutta, until further orders passed by the Court, except for attending the Court of the learned Police Magistrate or any other Court taking up the matter on the respective dates fixed, when he will be accompanied by the officers deputed by the Deputy Commissioner, Detective Department, Calcutta, from his residence to the Court and back.

(b) That all reasonable facilities are to be given to the investigation officer for

interrogating, at his residence, the accused-opposite party, who is stated to be ill, upon previous intimation being given in this behalf, and

(c) That liberty is given to the Petitioner to post Police pickets in front of the gate of the opposite party's residence at 188/10A, Prince Anwar Shah Road, Calcutta.

10. We further direct that the investigation is to be expedited.

11. The Rule is disposed of accordingly.

A.N. Banerjee J.

12. I agree.