

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. PETN. NO.37 OF 2019

The State of Tripura

Represented by its Home Secretary,
Government of Tripura,
New Capital Complex, PS:- NCC,
District:- West Tripura

-----Petitioner

Versus

Sri Anupam Paul,
S/O Late Kalipada Paul
R/O Jatanbari, Amarpur,
PS:- Nutan Bazar
District:- Gomati Tripura.

-----Accused Respondent

For petitioner(s)	:	Mr. A.K. Bhowmik, Advocate General Mr. Ratan Datta, Advocate
For Respondent(s)	:	Mr. P. Roy Barman, Advocate Mr. Samarjit Bhattacharjee, Adv. Mr. Kawsik Nath, Advocate
Date of hearing	:	24.07.2019
Date of delivery of Judgment & Order	:	09.08.2019
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE ARINDAM LODH

J U D G M E N T & O R D E R

By way of filing the present petition under Section 482 of the Code of Criminal Procedure, 1973, the State of Tripura, as petitioner, has challenged the order dated 12.07.2019 passed by the Ld. Judicial Magistrate 1st Class(Smt. Chandita Debnath), Court No.7, Agartala, West Tripura, in case No.2019WAWPS029, rejecting the prayer of the prosecution for according permission to

arrest the accused, the respondent herein upon addition of non-bailable offences.

2. Shorn of unnecessary details, I propose to discuss the relevant facts, necessary to decide the case.

3. On the basis of an FIR, lodged by one Sunit Sarkar dated 10.05.2019, the Officer-in-Charge of West Agartala Women Police Station had registered a case, bearing No.2019 WAW 029 against the accused-respondent under Section 501 of IPC on the allegation that he had posted provocative malicious defamatory publication and photographs in the social media concerning the Chief Minister and the other leaders of the State.

4. The accused-respondent was arrested by police in New Delhi on 12.06.2019 in connection with another case registered earlier in West Agartala PS Case No.2019/WAG/83 dated 26.04.2019 under Sections 464/469/501/120B of IPC. The accused was granted bail in the said police case by the Metropolitan Magistrate, Tishazari Court, New Delhi, but no bail-bond was furnished and the accused was produced before the Chief Judicial Magistrate, West Tripura, Agartala on 16.06.2019 upon transit remand. At that stage, some non-bailable offences were added against the accused by the Ld. Court on the prayer of the I.O. and the accused was remanded to police custody and jail custody, and subsequently he was granted bail.

5. Prior to release of the accused-respondent on bail in both the aforesaid cases, the Ld. Judicial Magistrate First Class, Court No.7, added Section 505(1)(c)/153(A) of the Indian Penal Code, which are non-bailable in connection with case No.2019WAW029 on 27.06.2019. The accused did not make any prayer for bail in respect of said non-bailable offences. Being released from jail, the prosecution moved before the Ld. Judicial Magistrate First Class, Court No.6 on 10.07.2019 for according permission to arrest the accused in case No.2019 WAW 029 in connection with non-bailable offences in which the accused even did not pray for bail despite his knowledge about the incorporating some offences which were of non-bailable under the Indian Penal Code.

6. According to the prosecution, the arrest of the accused-respondent was required for unearthing the connection of the accused with other offender/s and conspirator/s and for the purpose of interrogation. More so, the prosecution had pleaded that despite his knowledge of addition of some provisions of the Indian Penal Code which are of non-bailable in nature, the accused did not feel it necessary to pray for fresh bail, against such non-bailable offences.

7. The petition, seeking permission to arrest the accused was moved before the Ld. Judicial Magistrate 1st Class, Court No.6 as the Ld. Judicial Magistrate 1st Class, Court No.7 was not

available due to holiday. The Ld. Judicial Magistrate 1st Class, Court No.6 on 10.07.2019 posted the petition for permission to the next day before the Ld. Judicial Magistrate 1st Class, Court No.7 and ultimately it was finally heard on 12.07.2019 after furnishing notice to the accused-respondent.

8. After hearing the learned counsels at length, both on points of fact and law, the Ld. Court had rejected the prayer vide order dated 12.07.2019 passed in 2019WAW029 in the following manner:-

".....

*I find that admittedly, this Court allowed the accused bail **U/S 436 Cr.P.C** and not **U/S 437(1) or U/S 437(2) of Cr.P.C.** and as per the decision made in the Hon'ble Apex Court, this Court have the only power to order for re-arrest under **Secton-437(5) Cr.P.C.** which this Court can not apply in a case the bail has been granted under **Section-436 Cr.P.C.***

Unless and until a bail has been granted U/S 437(1) or 437(2) of Cr.P.C, there arises no question of applying Section 437(5) Cr.P.C.

In view of the above, in my considered opinion, I find that this Court has no power to order for re-arrest of the accused person as prayed by the IO of this case. Hence, the petition is rejected.

However, as this Court is unable to order for re-arrest of the accused as discussed above, the Prosecution side may approach the Ld. Higher Courts as per the provisions of Cr.P.C.

Return the CD.

Inform Ld. Special PP and Ld. Defence Counsels."

9. The State, being aggrieved of the said order, dated 12.07.2019 has filed this petition under Section 482 of the Code of Criminal Procedure asking for exercising its discretionary jurisdiction where the following reliefs are prayed for:-

"Under the circumstances stated above, it is more humbly and respectfully prayed that your honour would be graciously pleased to:-

- a. Admit this Petition;*
- b. Call for the records from the Ld. Court below*
- c. Issue notice upon the Respondent*

AND

d. After hearing, your Lordship would be pleased enough to quash/set aside the order dated 12.07.2019 passed in case no.2019WAWPS029 and further would be pleased enough to permit the IO of the case to arrest and interrogate the accused for the interest of investigation of the case for fair ends of justice.

AND

Pending disposal of this petition be pleased to allow the state to arrest the accused Respondent in connection with non-bailable offences in case no.2019 WAW 029.

AND

To pass any other order or orders as your Lordship may deem fit and proper."

10. At the time of hearing, Mr. A.K. Bhowmik, learned Advocate General has submitted that the Ld. Magistrate has failed to exercise its jurisdiction vested upon it, which caused serious

miscarriage of justice and which tantamounts to abuse of the process of the Court. Learned Advocate General has further submitted that the Ld. Court below wholly misread and misconstrued the provisions of Sections 436 and 437 of the Code of Criminal Procedure in rejecting the prayer of the State-petitioner. It is the further contention of learned Advocate General that the Ld. Court has failed to evaluate the principle enunciated in ***Hamida vs. Rashid alias Rasheed, (2008) 1 SCC 474*** as well as the decision of the Supreme Court in ***Pradeep Ram vs. State of Jharkhand, 2019 SCC OnLine SC 825***. It is urged before this Court that the State did not file the petition for cancellation of bail, but, only sought for permission to arrest the accused person and interrogate him on the ground of addition of Section 505(1)(c)/153(A), which are non-bailable in nature in connection with case No.2019 WAW 029 on 27.06.2019. Despite his knowledge, the accused did not make any prayer for bail in respect of the said non-bailable offences till the date of filing that petition. In that event, the jurisdiction lies only with the Court, which grants the bail to an accused in view of the principle enunciated in ***Pradeep Ram(supra)***. But the Ld. Court below has erroneously held that since the said Court had allowed the accused to go on bail under Section 436(2) CrPC, the same Court has no jurisdiction or vested with the power to cancel the bail under Section 437(5) CrPC and under Section 439(2) CrPC, as those powers were conferred with the superior Courts. Ld. Advocate General has

prayed for setting aside the said order dated 12.07.2019 and for according necessary permission to arrest the accused person. Ld. Advocate General has placed reliance on paragraph 29 of the decision of the Supreme Court in the case of **Pradeep Ram(supra)**.

11. Per contra, Mr. P. Roy Barman, learned counsel at the very outset has challenged the maintainability of the present petition filed by the State. According to him, the order dated 12.07.2019 passed by the learned Magistrate is not an interlocutory order, but a final order against which revision under Section 397 CrPC would lie and when there is specific provision, the State-petitioner would not have taken the recourse of Section 482 CrPC, which is only applicable where no specific provisions is provided in the Code. Mr. Roy Barman, learned counsel has further submitted that the inherent jurisdiction of this Court under Section 482 CrPC is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

12. Entering into the merits of the case, Mr. Roy Barman has contended that the accused-respondent is totally innocent and has falsely been implicated with the case. The non-bailable offences have been added only to harass the accused-respondent and the Ld. Magistrate has rightly rejected the prayer for cancellation of bail filed by the petitioner-State. According to learned counsel, the concerned Magistrate has no power to pass

an order for re-arrest of the accused-respondent after granting bail under Section 436 of CrPC. It is further contended that power under Section 437(5) of CrPC to re-arrest the accused-respondent only lies with the superior Courts, i.e. the High Court or the Sessions Court, and in exercise of power under Section 436 of CrPC, the Ld. Magistrate cannot cancel the bail which the Court granted earlier in connection with a case having offences of bailable nature.

13. Having taken note of the rival submissions, the following questions have emerged for analysis and decision:-

"(1) Whether the present petition filed under Section 482 of CrPC is maintainable?

(2) Whether the Court, which grants bail to an accused under Section 436 of CrPC can accord permission to the State investigating agency to re-arrest the accused person?"

14. While deciding the question No.1, as stated above, I may reproduce Section 482 of CrPC. It reads as under:-

"482. Saving of inherent power of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

15. There is no dispute in the Bar that the inherent jurisdiction under Section 482 of CrPC vested upon this Court has

to be exercised sparingly, carefully and with caution. Undoubtedly, the order dated 12.07.2019 passed by the Ld. Magistrate is a final order and revision can be filed under Section 397 of CrPC against such order.

16. The decision arrived at by the Ld. Magistrate is purely question of law. The Court has the duty to consider whether the Court below has exercised its jurisdiction vested upon it properly, failure of which will cause abuse of the process of the Court.

17. Since the instant petition involves a debatable substantial question of law, I am inclined to deal with this matter in exercise of my inherent power vested upon this Court under Section 482 of CrPC and upon analysis of the relevant provisions of law, if it is found, wrong exercise of jurisdiction by the Magistrate caused abuse of the process of the Court, then, the instant petition is well maintainable.

18. I have meticulously gone through the factual and legal aspects of the case of **Pradeep Ram**(*supra*). Exactly similar and identical question was decided by their Lordships of the Supreme Court. In para 7 of the said decision, similar issue was formulated as the issue No.2 of the present case. The relevant portion of the said paragraph may be set out here-in-below:-[SCC OnLine p.3 para 7]

"7. From the submissions of the learned counsel for the parties and the pleadings on the record, following are the issues, which arise for consideration in these appeals:-

(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?

(ii)

(iii)

(iv)

(v)”

19. While discussing this issue, the Supreme Court has taken note of various divergent decisions passed by various High Courts. The Supreme Court has also taken note of its decision in **Hamida vs. Rashid alias Rasheed**(*supra*) at para 17, which may be reproduced here-in-below:- [SCC OnLine p.5 para 17]

"17. This Court in *Hamida v. Rashid alias Rasheed and Others, (2008) 1 SCC 474* held that an accused after addition of serious non-cognizable offence is required to surrender and apply for bail for newly added offences. It is, thus, clear that the bail granted to an accused earlier to addition of new non-bailable offence shall not enure to the benefit of the accused insofar as newly added offences are concerned and he is required to surrender and obtain a bail with regard to newly added offences to save him from arrest."

20. In **Pradeep Ram**(*supra*), the Supreme Court has also taken note of two Judge Bench decision in **Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332** and reproduced its observation thus:-[SCC OnLine p.7, 8 para 23, 24, 25]

"23. We may notice one more judgment of this Court reported in *Mithabhai Pashabhai Patel v. State of Gujarat,*

(2009) 6 SCC 332. Two Judge Bench of this Court in paragraph 18 laid down following:

"18. The appellants had been granted bail. They are not in custody of the court. They could not be taken in custody ordinarily unless their bail was not (sic) cancelled. The High Court, in our opinion, was not correct in holding that as further investigation was required, sub-section (2) of Section 167 of the Code gives ample power for grant of police remand."

24. What this Court said in the above case is that accused who have been granted bail and are not in custody could not be taken in custody ordinarily unless their bail was not cancelled. Can from the above observation it can be held that unless the bail earlier granted is cancelled the Court has no power to direct the accused to be taken into custody.

25. We may have again to look into provisions of Sections 437(5) and 439(2) of Cr.P.C. Sub-section (5) of Section 437 of Cr.P.C uses expression 'if it considers it necessary so to do, direct that such person be arrested and commit him to custody'. Similarly, sub-section (2) of Section 439 of Cr.P.C. provides: 'may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody'. A plain reading of the aforesaid provisions indicates that provision does not mandatorily provide that the Court before directing arrest of such accused who has already been granted bail must necessary cancel his earlier bail. A discretion has been given to the Court to pass such orders to direct for such person be arrested and commit him to the custody which direction may be with an order for cancellation of earlier bail or permission to arrest such accused due to addition of graver and noncognizable offences. Two Judge Bench judgment in *Mithabhai Pashabhai Patel (supra)* uses the word 'ordinarily' in paragraph 18 of the judgment which cannot be read as that mandatorily bail earlier granted to the accused has to be

cancelled before Investigating Officer to arrest him due to addition of graver and non-cognizable offences."

21. After discussions on various legal issues and on interpretation of the relevant legal provisions in the Code, the Apex Court has held in **Pradeep Ram**(*supra*) that:-[SCC OnLine p.9 para 29]

"29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of

offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail."

22. Reliance being placed on the aforesaid principles as enunciated by the Supreme Court, this Court may summarize the law relating to the issue in the following manner:

- (i)** In a given circumstance where after grant of bail to an accused, further cognizable or non-bailable offences are added, the accused may surrender to the Court which had granted him bail and on being refusal of bail, the accused can be arrested.
- (ii)** Further, the investigating agency can take recourse of Section 437(5) or Section 439(2) of CrPC and seek an order from the Court for arrest of the accused and his custody.
- (iii)** However, on addition of a non-bailable offence or offences, the police may not proceed to arrest the accused, but for arresting the accused, the investigating agency needs to obtain permission or order to arrest the accused from the Court which had granted the bail.

23. Coming back to the facts of the instant case, the respondent, who being an accused of the case bearing No.2019 WAW 029, was enlarged on bail by an order passed by the Ld. Magistrate in exercise of its power under Section 436 of CrPC. He has mandatorily to take bail due to the addition of Sections 505(1)(c)/153(A) of IPC which are of non-bailable offences in

connection with case No.2019 WAW 029 on 27.06.2019. But he did not make any prayer for bail in respect of the said non-bailable offences though addition of such non-bailable offences was within his knowledge. After addition of such non-bailable offences the investigating agency had approached the Ld. Court of Magistrate which granted bail to the respondent and sought for permission to arrest him and to take him in custody. The Ld. Court of Magistrate came into the finding that he released the accused-respondent on bail in exercise of its power under Section 436 of CrPC and he cannot cancel the bail already granted to the accused-respondent even on addition of non-bailable offences unless and until the conditions/factors laid down in sub-section (2) of Section 436 of CrPC are not complied with. The Ld. Court below has further observed that the Court of Magistrate has no power to exercise the jurisdiction under Sections 437 and 439 of CrPC which absolutely lies with the High Court and the Sessions Court.

24. What transpires from a bare reading of sub-section (5) of Section 437 of CrPC is that the Court of Magistrate which granted bail to an accused under sub-section (1) or sub-section (2) of Section 437 of CrPC, may direct that a person be again arrested and committed to custody which virtually tantamounts to cancellation of the bail.

25. The settled principle for cancellation of bail, so far is that the person on bail commits the very same offence during the

course of investigation, trial thereby (i) proves his unfitness to remain on bail; (ii) if he hampers with the investigation during the period of remaining on bail; (iii) if he tampers with the evidence by intimidating the witnesses, removing proofs of crime, etc.; (iv) if he runs away to foreign country, or goes underground, or beyond the control of his sureties, etc.; and (v) if he commits any violence in revenge against the prosecution agency or witnesses.

26. By and large, these are the grounds for cancellation of bail, be that under sub-section (5) of Section 437 or sub-section (2) of Section 439 of CrPC. The only difference of power vested under Section 437 of CrPC is that a Court of Magistrate, which granted bail, may cancel the bail on the grounds mentioned above and the Court of Sessions and the High Court enjoy a superior power in cancellation of bail, be it granted under Sections 436, 437, 438 or 439 of CrPC keeping in mind the judicial discipline.

27. The case at hand, there is no such allegation against respondent, Sri Anupam Paul that he did any of the overt acts, as mentioned above, so as to cancel his bail either under Section 437(5) or under Section 439 CrPC. But, the investigating agency through the learned Public Prosecutor has filed a petition and in course of hearing before this Court the learned Advocate General has categorically submitted that the only purpose of filing the application before the Ld. Magistrate was that to obtain permission to arrest the accused-respondent as he did not apply for a fresh

bail consequent to addition of non-bailable offences. It is true that the Ld. Court of Magistrate did not grant bail to the accused-respondent in exercise of its power under Section 437(1) or Section 437(2) of CrPC, but the finding to the effect that being a Court of Magistrate it cannot invoke its jurisdiction under Section 437(5) of CrPC in view of the fact that bail has been granted under Section 437 CrPC is erroneous and arbitrary, which caused the abuse of the process of the Court.

As such, on the context of particular facts, as raised in this petition, the present petition filed by the petitioner-State asking this Court to exercise its inherent power under Section 482 of CrPC is maintainable.

28. The Ld. Court of Magistrate ought to have considered that cancellation of bail, and on the other hand, to pass an order of arrest in exercise of power under Section 437(5) of CrPC, are two distinct features in Criminal Jurisprudence. To pass an order, according permission to the investigating agency to arrest a person and to take him to custody, the cancellation of earlier bail is not a *sine qua non*.

29. The power vested upon the Court under Section 436 to Section 439 of CrPC in regard to bail was dealt with by the Supreme Court in the case of **Pradeep Ram**(*supra*) in the following manner:[SCC OnLine p.6, para 19, 20, 21]

"19. We may refer to the relevant provisions of the Cr.P.C. regarding grant of bail. Chapter XXXIII of the Code of Criminal

Procedure, Sections 436 to 439 deals with bail. Section 437 deals with the provision when bails can be taken in case of non-bailable offence. Section 437(5), which is relevant for the present controversy is as follows:-

"(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody."

20. Section 439 deals with special powers of High Court or Court of Session regarding bail. Section 439(2) is to the following effect:-

"(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

21. Both Sections 437(5) and 439(2) empowers the Court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII. There may be numerous grounds for exercise of power under Sections 437(5) and 439(2). The principles and grounds for cancelling a bail are well settled, but in the present case, we are concerned only with one aspect of the matter, i.e., a case where after accused has been granted the bail, new and serious offences are added in the case. A person against whom serious offences have been added, who is already on bail can very well be directed to be arrested and committed to custody by the Court in exercise of power under Sections 437(5) and 439(2). Cancelling the bail granted to an accused and directing him to arrest and taken into custody can be one course of the action, which can be adopted while exercising power under Sections 437(5) and 439(2), but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, Court can direct the accused to be arrested and committed to custody. The addition of serious offences is one of such circumstances, under which the Court can direct the

accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the time when bail was considered and granted.”

30. On appraisal of the above observations and discussions and on a conjoint reading of the principle outlined at para 29 in the case of **Pradeep Ram**(*supra*), according to me, the Court of Magistrate has vested with the power to accord permission on receipt of an application from the investigating agency to arrest the accused and to take him in the custody since it is the same Court which allowed the accused to go on bail and for this cancellation of the earlier bail is not at all necessary.

31. After being considered the submissions and the settled principles of law, I find that for all intents and purposes, the present petition has been filed for a direction upon the respondent Anupam Paul, who was an accused in connection with case No.2019 WAW 029 to surrender before the Court of Ld. Magistrate, Agartala, West Tripura and may apply for bail on the ground that subsequently non-bailable sections *i.e.* Sections 505(1)(c)/153(A) of CrPC have been added.

32. In view of the aforesaid discussions, it will not be correct proposition of law that, once the Magistrate had exercised its power under Section 436 of CrPC the concerned Magistrate has no power to pass an order according permission to arrest and to

take the accused in custody in the event of subsequent addition of the provisions of non-bailable offences under Indian Penal Code.

33. In view of the analysis as narrated above, this Court in exercise of its power under Section 482 of CrPC is inclined to set aside the order dated 12.07.2019 passed by the Learned Court of Magistrate in connection with case No.2019 WAW 029. Accordingly, the order dated 12.07.2019 passed by the learned Court of Magistrate is set aside and this Court directs respondent Sri Anupam Paul to surrender before the Court of Learned Magistrate, which Court had granted him bail earlier, within a period of seven days from the date of this order and pray for bail and the learned Magistrate shall hear and consider the said bail application on merit. Alternately, in the event of failure to surrender, the learned Magistrate shall permit the prayer of Investigating Agency to arrest the respondent Anupam Paul and take him to custody. It is made clear that in the said exercise, the learned Court of Magistrate need not cancel the earlier bail granted to the accused-respondent, Anupam Paul.

34. With the above observation and direction, the instant petition stands allowed and disposed of.

JUDGE