

**Criminal Revision**

Present:

**The Hon'ble Justice Ashim Kumar Roy**

Judgment on 20.08.2010

***C.R.R. No. 1914 of 2010***

***Badal Chandra Rakshit  
Versus  
The State of West Bengal***

***With***

***C.R.R. No. 36 of 2010***

***Badal Chandra Rakshit & Anr.  
versus  
The State of West Bengal & Anr.***

Points:

**Bail:** The case involved an offence punishable under sec. 409 of the Indian Penal Code-Whether bail can be granted on the very first day of the production in Court unless there are special reason-Code of Criminal Procedure, 1973 – S.437(1)

Facts:

The petitioners have been arraigned as accused in connection with a case relating to the offences punishable under Sections 409/420/406/34 of the Indian Penal Code, on the allegations of defalcation of a sum of Rs. 2,81,000/- approximately. Both the petitioners were arrested on 21<sup>st</sup> March, 2009 and on being produced in Court on the self-same day, both of them were released on bail by the Learned Additional Chief Judicial Magistrate, Chandernagore. The said order of granting bail being challenged before the Learned Sessions Judge, Hooghly, the Learned Sessions Judge cancelled the said order of bail.

Held:

The case in connection with which the petitioners were granted bail involved an offence punishable under Section 409 of the Indian Penal Code which is punishable with imprisonment for life. As such in view of the specific bar contained in sub-section (1) of Section 437 of the Code of Criminal Procedure, it is not permissible for the Learned Magistrate to release the accused on bail, unless there are special reasons. Para 4

However, having gone through the order whereby the petitioners were granted bail, Court does not find any special reason has been assigned by the Learned Court concerned, while enlarging the accused on bail. Moreover, having regards to the materials available as against the present petitioners from the Case Diary, there are not supposed to be enlarged on bail on the very first day of their production in Court. In the Case Diary there are sufficient materials against the present petitioners, who have allegedly defalcated nearly Rs. 2,81,000/-. In such view of the matter, the Learned Judge has not committed any mistake in canceling the petitioners' bail. Para 5

For Petitioners : Mr. Sudip Ghosh Chowdhury

For O.P. No. 2 : Mr. Debabrata Roy

For State : Mr. Joy Sengupta

The Court: The present petitioner in this case who is happened to be the Manager-cum-cashier and the petitioner no. 2 in C.R.R. No. 36 of 2010, who is the Secretary of the Haripal Tant Silpa Samabaya Samiti, have been arraigned as

accused in connection with a case relating to the offences punishable under Sections 409/420/406/34 of the Indian Penal Code, on the allegations of defalcation of a sum of Rs. 2,81,000/- approximately. In connection with the said case, both the petitioners were arrested on 21<sup>st</sup> March, 2009 and on being produced in Court on the self-same day, both of them were released on bail by the Learned Additional Chief Judicial Magistrate, Chandernagore.

The said order of granting bail being challenged before the Learned Sessions Judge, Hooghly, the Learned Sessions Judge cancelled the said order of bail.

2. In C.R.R. No. 36 of 2010 while the subject matter of challenge is the order of cancellation of bail, in C.R.R. No. 1914 of 2010 the challenge is against an order of issuance of warrant of arrest passed by the Learned Additional Chief Judicial Magistrate, Chandernagore as the petitioner did not surrender in the Court after their bail being cancelled. Since in both the cases the issues involved are closely connected same are taken up for hearing as a matter of convenience.

3. Heard the learned advocate appearing on behalf of the parties and the other materials on record as well as the Case Diary.

4. The case in connection with which the petitioners were granted bail involved an offence punishable under Section 409 of the Indian Penal Code which is punishable with imprisonment for life. As such in view of the specific bar contained in sub-section (1) of Section 437 of the Code of Criminal Procedure, it is not permissible for the Learned Magistrate to release the accused on bail, unless there are special reasons.

5. However, having gone through the order whereby the petitioners were granted bail, I do not find any special reason has been assigned by the Learned Court concerned, while enlarging the accused on bail. Moreover, having regards to the materials available as against the present petitioners from the Case Diary, I am of the opinion there are not supposed to be enlarged on bail on the very first day of their production in Court. I find in the Case Diary there are sufficient materials against the present petitioners, who have allegedly defalcated nearly Rs. 2,81,000/-. In such view of the matter, the Learned Judge has not committed any mistake in canceling the petitioners' bail.

6. Accordingly, both the instant criminal revisions stand dismissed and order passed by the Learned Additional Sessions Judge, 3<sup>rd</sup> Court, Hooghly stands affirmed.

7. The petitioners are directed to surrender in the Court below within a week from this date and failing which the Learned Additional Chief Judicial Magistrate, Chandernagore shall take necessary legal action against them for their apprehension. It goes without saying this order will not operate as a bar to consider the petitioner's prayer for bail by any competent Court at the appropriate stage.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( *Ashim Kumar Roy, J.* )