

NDPS Case No.01 of 2022
JO CODE No.WB00575
CNR No.WBUD01-000108-2022

Order No.28

13.03.2023

The accused Vishal @ Bishal Haldar is present by filing hazira along with his Ld. Advocate.

Ld. PP in charge is also present.

Today is fixed for hearing the petition filed by Ld. PP on 06.03.2023 with a prayer for revoking the bail order dated 04.03.2023 of this court on the grounds stated therein.

Accordingly, the record is taken up for hearing the same.

Ld. Lawyer for the accused person submits that his client Vishal @ Bishal Haldar has been granted bail by this court by exercising his judicial discretionary on merit and it is further submitted that there is no any ground for recalling or revoking the order of the bail granted by this court.

On the contrary, the petition filed by the prosecution is not maintainable and liable to be rejected.

In support of his submission he has cited three rulings as follows:-

1. (2007) 6 SCC Page 120
2. (2014) 10 SCC Page 754
3. Kulwant Sing Vrs. State of Punjab

Ld. PP in his turn, has assailed the argument of the defence, stating that the order of bail obtained by suppressing the material fact that anticipatory bail of this petitioner u/s.438 of Cr.P.C was rejected by Hon'ble High Court upon considering the case diary. It is further argued that though the word has been mentioned as recall or revoke but the bail order as passed by this court to be cancelled as it was obtained fraudulently.

In support of his submission, he has filed the xerox copy of the order dated 06.02.2023 C.R.M (A) 500 of 2023.

Heard both sides at length. Perused the case record and case diaries.

It appears that this accused/petitioner surrendered before this court on 04.03.2023 with a prayer for bail on the ground stated in his bail application.

On that bail application, neither the petitioner has anywhere mentioned that before surrendering the accused/petitioner to this court, his bail application u/s.438 of Cr.P.C was rejected by Hon'ble High Court nor has whispered in any verification petition that bail application u/s.438 of Cr.P.C was rejected by Hon'ble High Court prior to surrender of the petitioner.

Even Ld. Lawyer of the accused person never mentioned in his argument that bail application u/s.438 of Cr.P.,C was rejected by Hon'ble High Court.

From the xerox copy of the order of the Hon'ble High Court, Calcutta in c/w C.R.M (A) 05 of 2023 it appears that Hon'ble High Court on order dated 06.02.2023 was pleased to reject the anticipatory bail of this petitioner.

The above fact is clearly established as new circumstances as well as new facts by way of suppressing the material facts that before surrendering the petitioner, his anticipatory bail u/s.438 of Cr.P.C was rejected by Hon'ble High Court, Calcutta.

It is pertinent to mention that the Ld. Advocate as well as petitioner should have/had pointed out before the court at the time of surrender that bail application of this petitioner u/s.438 Cr.P.C was rejected by Hon'ble High Court as it is desirable as per the principle of if you seek equity must do equity or if you seek justice before the court of law then you must come with clean hands.

In this context I would like to state that I have carefully gone through the citations referred by the Defence Counsel and my humble and considered opinion is that all the facts of the citations are not similar with the facts and circumstances of the instant case and not having squarely application in this case.

It is pertinent to mention that though the prosecution has mentioned the word recall or revoke the order dated 04.03.2023 but it is mentioned in his oral argument that he wanted to mean to cancel the bail order as fraudulently obtained.

In view of above facts I hold that it is a fit case for cancelling the bail as new circumstances has been made out by way of suppressing the materials facts of rejection of the anticipatory bail by Hon'ble High Court immediate prior to the surrender of the petitioner.

Thus, the bail order dated 04.03.2023 passed by this court is hereby cancelled u/s.437(5) Cr.P.C and accused/petitioner is taken into custody and remanded to J/C till to-date (**22-03-2023**).

Spl.Judge(NDPS)

Spl.Judge(NDPS),