

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 15th DECEMBER, 2017

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.14 of 2017

Petitioner : State of West Bengal
Through the Criminal Investigation Department,
Represented by Goutam Ghoshal,
Deputy Superintendent of Police (Special),
CID, Siliguri,
West Bengal.

versus

Respondent : Smt. Sabitri Rai,
W/o Mangal Deo Rai,
R/o Badamtang T.E.,
P.O. Lebong,
P.S. Sadar,
District : Darjeeling,
West Bengal.

Application under Section 439(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. Rajdeep Mazumder, Advocate with Mr. Avrojoyti Das, Mr. Maukh Mukherjee and Mr. Girmey Bhutia, Advocates for the Petitioner.

Mrs. Prassanna Rai Yonzon, Inspector, CID, Siliguri, West Bengal, in person.

Surety in person.

O R D E R

Meenakshi Madan Rai, J.

1. Assailing the Orders of the Learned Sessions Judge, South Sikkim, at Namchi (for brevity "Sessions Court, Namchi"), dated 02-09-2017 and 04-09-2017, in Criminal Misc. Case No.99 of 2017, the Petitioner herein seeks setting aside of the impugned

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Orders and prays that the Respondent-Accused (hereinafter, Accused), be remanded to custody.

2. The arguments of Learned Counsel for the Petitioner were two-pronged. Firstly, the propriety of the Order of the Sessions Court, Namchi, dated 02-09-2017, granting interim Bail to the Accused and confirming the Order on 04-09-2017 was questioned being allegedly on extraneous considerations and without jurisdiction. In the second leg of his arguments, it was contended that despite the fact that the Accused had obtained Bail, she had failed to comply with the conditions set forth therein, viz; to make her self-available before the Investigating Officer (for short "I.O."), thereby impeding investigation.

3. That, several attempts made by the I.O. to locate the Accused at her residence, as reflected in the Affidavit of the I.O. dated 12-12-2017, has culminated in vain, as the house of the Accused was found to be locked. That, the I.O. having no other alternative took it upon herself to serve a Notice dated 07-12-2017 on the Surety of the Accused, who is present in Court, and vouches for the fact that the Accused is untraceable in the address furnished by her. It was further urged that the Accused is avoiding the Notice and ensuring that it cannot be served on her by remaining out of her house. That, the Notice issued by this Court was also returned with the report that the addressee was out of station. Nevertheless as the Notice was properly addressed to her in the residential address, furnished by her before the Sessions Court, Namchi, the Notice is deemed to have been served in terms of Section 27 of the

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General Clauses Act, 1897. His submission on this count was garnered with reliance on the ratiocination of the Hon'ble Supreme Court in ***State of M.P. vs. Hiralal and Others***¹ and ***K. Bhaskaran vs. Sankaran Vaidhyan Balan and Another***².

4. Learned Counsel would further canvass that the Sessions Court, Namchi issued the impugned Orders without jurisdiction, as the First Information Report (for short "FIR") was lodged against the Accused (numbered as Accused No.14), at Sadar Police Station, Darjeeling, West Bengal, on 09-06-2017, pursuant to an offence committed by her with several others also in Darjeeling and she is a resident of the same place. Following the lodging of the FIR, on 31-08-2017 the Special Superintendent of Police (North), Criminal Investigation Department, Siliguri, West Bengal, informed and sought the assistance of the Superintendent of Police, South Sikkim, Namchi, Sikkim, in apprehending the Accused along with other Accused Persons mentioned in the letter therein. Consequently, the arrest was made, but the Sessions Court, Namchi has recorded that the Accused was arrested without a Warrant of Arrest from a competent Court. The fact of arrest of the Accused under a Warrant of Arrest is evident from the letter addressed by the I.O. to the Court of the Learned Chief Judicial Magistrate, South Sikkim, Namchi, where a prayer for two days' transit remand was sought after her arrest and production before the said Court. No order was passed by the Learned Court of the concerned Magistrate. Instead, the Accused approached the Sessions Court, Namchi, who

¹ (1996) 7 SCC 523

² (1999) 7 SCC 510

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without considering that the prayer for transit remand was pending, granted Bail *sans* jurisdiction. The Sessions Court, Namchi had in its impugned Order recorded that the Accused was not arrested in the presence of female police personnel, contrary to the records available inasmuch Mrs. Prassanna Rai Yonzon, Inspector, CID, Siliguri, West Bengal, is the I.O. of the case. That apart, following the arrest of the Accused, her husband, Mangal Deo Rai, was duly informed. To fortify his submissions succour was drawn from the pronouncements in **Central Bureau of Investigation, New Delhi vs. Showkat Ahmed Bakshi and Others**³ and **Puran vs. Rambilas and Another**⁴. It is urged that, in view of the above facts and circumstances, the impugned Orders deserve to be and ought to be set aside.

5. Due consideration has been given to the submissions made at the Bar and the documents placed on record have been carefully perused by me.

6. The instant matter arose out of an FIR dated 09-06-2017 pertaining to an incident of 08-06-2017, alleged to have originated at "Bhanu Bhawan", Darjeeling, West Bengal. On the said date, at around 11.30 a.m., the Accused along with others named in the FIR, *inter alia* allegedly obstructed the approach to the Raj Bhawan, where a Cabinet meeting was scheduled to be held at 14.00 hours, resulting in a fracas and the lodging of the FIR and registration of the case at Sadar Police Station, Darjeeling, on 09-

³ 1995 Supp (3) SCC 73

⁴ (2001) 6 SCC 338

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06-2017. This was followed by the information addressed to the Superintendent of Police, South Sikkim, Namchi, dated 31-08-2017, from the Special Superintendent of Police (North), Criminal Investigation Department, Siliguri, West Bengal, Annexure A2, to the effect that the Accused who was absconding was reportedly under the jurisdiction of the Superintendent of Police, South Sikkim, and his assistance was sought to apprehend the Accused. Annexure A2 was duly endorsed to SHO, Namchi P.S., and on the same date the Accused was arrested on the basis of a Warrant of Arrest as reflected in Annexure A5 and handed over to the SHO, Namchi P.S. for safe custody. On 02-09-2017, vide Annexure A4, the I.O. sought custody of the Accused from the Namchi P.S. for production before the Court of the Learned Chief Judicial Magistrate, South Sikkim and sought transit remand from the Magisterial Court, enclosing for perusal of the Court a copy of the FIR, Warrant of Arrest, Memo of Arrest and Medical Opinion relating to the Accused. Pending orders therein, the Accused approached the Sessions Court, Namchi where Bail was obtained vide the impugned Orders. These being the sequence of events in a nutshell, I now turn to address the question of service of Notice.

7. It is clear that the I.O. on Affidavit has stated that she went to the residence of the Accused to serve the Notice by *dasti* on several occasions till 11-12-2017, but found that the Accused person's house was locked. It is also seen that the service of the Notice upon the Accused issued by this Court could not be served on account of the addressee being out of station. The Notice was

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issued to the Accused as per the address furnished by her to the Sessions Court, Namchi, at the time of obtaining Bail. In such a circumstance, we may profitably turn to the provision of Section 27 of the General Clauses Act, 1897, extracted hereinbelow;

"27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

8. While dealing with this provision, the Hon'ble Supreme Court in *Harcharan Singh vs. Smt. Shivrani and Others*⁵ expounded as follows;

"7. Section 27 of the General Clauses Act, 1897 deals with the topic— "Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence

⁵ (1981) 2 SCC 535

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Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise." [emphasise supplied]

9. In *Hiralal* (*supra*) relied upon by the Petitioner, which pertained to a civil dispute, it was held that;

"**1.** In view of the office report, it would be clear that the respondents obviously managed to have the noticed returned with postal remarks "not available in the house", "house locked" and "shop closed" respectively. In that view, it must be deemed that the notices have been served on the respondents."

10. In *K. Bhaskaran* (*supra*), the stand taken in the decision of *Harcharan Singh* (*supra*) was reiterated. Consequently, no further discussions need ensue on this point and in view of the facts and circumstances reflected hereinabove, it shall safely be presumed in this matter that Notice was served upon the Accused.

11. Coming to the question of propriety of the Sessions Court, Namchi in granting Bail to the Accused, while perusing the FIR, Annexure A1, there can be no manner of doubt that the offence was committed in the District of Darjeeling, West Bengal, under the jurisdiction of the Sadar P.S. on 08-06-2017. It is also evident that the name of the Accused finds place at serial no.14, in the FIR, where her place of residence is clearly indicated as "*Badamtam T.E., Sadar, Darjeeling*".

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12. In this context, it would be worthwhile to draw attention to the provisions of Section 2(j) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") which reads as follows;

"2.

(j) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;" [emphasise supplied]

A bare perusal of this provision clarifies what local jurisdiction entails.

13. We may also look at the provisions of Sections 177, 178 and 179 of the Cr.P.C. which lay down as follows;

"177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

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It would be trite to state again that the afore-extracted provisions need no further elucidation, be it stated that neither did the offence occur in Namchi, within the jurisdiction of the Sessions Court, Namchi, nor is the Accused a resident thereof.

14. In *Syed Zafrul Hassan and Another vs. State*⁶, a three Judge Bench of the Patna High Court while discussing the jurisdiction of the Criminal Courts in enquiries and trials, went into provisions of Section 177 of the Cr.P.C. and discussed as follows;

"10. It is then well settled that the Code of Criminal Procedure is exhaustive with regard to the matters with which it deals and is to be read as a harmonious whole. Chapter XIII lays down the jurisdiction of the criminal courts in inquiries and trials. The cornerstone of the principle therein is set out in the first S. 177 which is in the terms following:—

"177. Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed." It is manifest from the above section and equally from the other provisions of Chapter XIII that the whole concept of jurisdiction for trials and inquiries by criminal courts is the place or the spot of the commission of the crime and not the residence of the accused or any other place where he may choose to flee and may be found. Reference in this connection may also be made to S. 76 and S. 167(2) which are in the terms following:—

"76. Person arrested to be brought before Court without delay. — The police officer or other person executing a warrant of arrest shall (subject to the provisions of S. 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person :

....."

"167. Procedure when investigation cannot be completed in twenty-four hours.—

x x x x

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time,

⁶ AIR 1986 Patna 194

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authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

x x x x ”

The aforesaid provisions highlight the basic rule that offences are to be inquired into and tried in a court having geographical jurisdiction over the locale of crime. Even if the accused is found far beyond the arena of the crime, he has to be brought back before the court having local jurisdiction to try the same. It is not that the accused person's presence would carry the jurisdiction with him to any court where he may fortuitously be present or where he may deliberately have chosen to flee. It seems further manifest that on larger principle wherever the jurisdiction of the criminal court for trial and inquiry of the offence lies, there alone would lie the jurisdiction for grant of bail and equally for anticipatory bail, unless a statute expressly provides otherwise. It seems anomalous to hold that one court would have jurisdiction for the trial of the crime but another for the grant of anticipatory bail therefor.

.....

22. Therefore, a fugitive offender may well move from court to court ad infinitum and if he fails in one jurisdiction then on to another until he secures relief in the last. It seems plain that somewhat curious and anomalous results which necessarily flow from the stand canvassed on behalf of the petitioners would be an added factor for not subscribing to such a view.

.....

25. In the present case it is not in dispute that the case against the two petitioners has been registered in Jhinkpani police station which falls in the district of Singhbhum. The matter thus comes squarely within the jurisdiction of the Ranchi Bench. The preliminary objection on behalf of the opposite party State against the very maintainability of this criminal miscellaneous petition at Patna, therefore, must be upheld. This petition is consequently dismissed and the petitioners are relegated to seek their remedy in the appropriate forum of the Ranchi Bench, if so advised.”

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15. It is evident in the aforesaid matter that the case against the two Petitioners had been registered in a particular Police Station, but Bail was granted by a Court which had no local jurisdiction to try the offence leading to the above order. The situation is similar in the case at hand. The offence has been committed in Darjeeling, West Bengal; the FIR has been lodged in Darjeeling, West Bengal; the Accused is a resident of Darjeeling, West Bengal; the fact that she was arrested in Namchi, South Sikkim, does not clothe the Sessions Court, Namchi, with jurisdiction to grant the Bail.

16. That position being settled, it would next be necessary to delve into the conduct of the Accused post the Order of Bail, dated 04-09-2017, which imposed conditions on her which were as follows;

“Bail petition is accordingly allowed. The interim bail granted to the Petitioner is confirmed subject to the following conditions:-

- 1) That the Petitioner shall appear before the investigating agency as and when required for investigation and shall co-operate with the investigation.
- 2) That the Petitioner shall not be threatened (*sic*) or influence the witnesses acquainted with the facts of this case.”

Although a specific condition has been imposed on the Accused to cooperate with the Investigating Agency, the Accused is untraceable. Instead of remaining in station, or even if elsewhere, instead of making herself available to the Investigating Agency she has chosen to lock her house and become inaccessible to the Police machinery, thereby thwarting and impeding the course of justice.

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Once on Bail, all that was required was her cooperation in the investigation, which unfortunately for reasons best known to her, she has failed to comply. What has followed as a corollary is a prayer for cancellation of Bail so granted.

17. Now, the next question is when can a Bail be cancelled. In *Dolat Ram and Others vs. State of Haryana*⁷ this question was elaborately dealt with and the Hon'ble Supreme Court held as follows,

"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

What emerges therefrom is that the grounds for cancellation of Bail broadly are; interference or attempt by the Accused with the due course of administration of justice or evasion or attempts to evade the due course of justice or abuse of the concession granted in any manner and thereby thwarting the process of investigation. In addition other grounds may also be considered, such as, threats

⁷ (1995) 1 SCC 349

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by the Accused to witnesses, indulgence in similar activities during the Bail period and attempts to flee to another country.

18. The principle in *Dolat Ram (supra)* was followed in *Mahant Chand Nath Yogi and Another vs. State of Haryana*⁸ wherein the Supreme Court reiterated the law that there is distinction between rejection of Bail in a non-bailable case at the initial stage and the cancellation of Bail already granted. It was held that normally very cogent and over-whelming grounds or circumstances are required to cancel the Bail already granted.

19. In *Subodh Kumar Yadav vs. State of Bihar and Another*⁹ the Hon'ble Supreme Court observed that,

"16. In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material, or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the Public Prosecutor/complainant where required, an order for cancellation of bail can in fact be made. (See *Gajanand Agarwal v. State of Orissa* [(2006) 12 SCC 131 : (2007) 1 SCC (Cri) 568 : (2006) 9 Scale 378] and *Rizwan Akbar Hussain Syed v. Mehmood Hussain* [(2007) 10 SCC 368 : (2007) 3 SCC (Cri) 598], at SCC p. 370, para 7.) Further, while cancelling bail, the superior court would be justified in considering the question whether irrelevant materials were taken into consideration by the court granting bail."
[emphasise supplied]

20. Having taken into consideration the entire gamut of the facts and circumstances unravelled in this matter, it goes without saying that in the first instance, the Bail was granted by the Sessions Court, Namchi without jurisdiction or taking into consideration the facts and circumstances of the matter placed

⁸ (2003) 1 SCC 326

⁹ (2009) 14 SCC 638

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before him. No efforts were employed to examine the state of the prayer for transit remand or call for the records from the concerned Learned Magisterial Court. Secondly, the conditions stipulated in the impugned Order dated 04-09-2017 have been flouted by the Accused. The inevitable conclusion would be that cancellation of the Bail Order should follow.

21. Consequently, the impugned Orders dated 02-09-2017 and 04-09-2017 of the Court of the Learned Sessions Judge, South Sikkim, Namchi, are quashed and set aside.

22. The Bail Bonds of the Accused stand cancelled.

23. Crl.M.C. stands disposed of accordingly.

24. A copy of this Order be sent to the Court of the Learned Sessions Judge, South Sikkim, at Namchi, and also to the Court of the Learned Chief Judicial Magistrate, South Sikkim, at Namchi, for information.

(Meenakshi Madan Rai)
Judge
15-12-2017

Approved for reporting : **Yes**

Internet : **Yes**