HAZARI LAL DAS

v.

STATE OF WEST BENGAL & ANR.

(Criminal Appeal No. 1732 of 2009)

SEPTEMBER 8, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Code of Criminal Procedure, 1973 – s.438 – Complaint u/ss. 403, 409, 420, 467/34 IPC – Grant of anticipatory bail – Cancelled by High Court – On appeal, held: Cancellation of bail not justified – Record does not show interference or attempt of interference with the due course of administration of justice, or abuse of the concession, on the part of the accused.

Daulat Ram and Ors. vs. State of Haryana **(1995)1 SCC 349, referred to.**

Case Law Reference:

(1995) 1 SCC 349	**Referred to**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1732 of 2009.

From the Judgment & Order dated 18.9.2008 of the High Court of Calcutta in CRM. No. 7046 of 2008.

Ambika Ray, Zaki Ahmad Khan, M. Khairati, Irshad Ahmad for the Appellant.

Tara Chandra Sharma, Neelam Sharma, Pankhuri Shrivastava, Jitendra Mohapatra, Shibashish Pattanaik, Merusagar Samantaray for the Respondents.

The Order of the was Court delivered by

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ORDER

R.M. LODHA, J. 1. Leave granted.

2. On the basis of the complaint made by Jayanta Naskar, Secretary, Sambhunagar High School, P.O. Sambhunagar, a
B First Information Report being FIR No.15/2008 was lodged on May 30, 2008 under Sections 403, 409, 420, 467/34 IPC, at Police Station Gosaba, District 24 Parganas (South). It is alleged that appellant who is Headmaster of Sambhunagar High School opened a bank account No. 0855010083094 with
C the U.B.I., Lalbazar Branch, Kolkata on April 30, 2008; that the appellant introduced his servant Gour Dhara as a secretary of the school; that the said account was opened jointly with his servant and that he deposited a cheque of Rs.6,00,000/- which had come to the school from Sports and Youth Services (Sports
D Wing), Government of West Bengal, with an intention to misappropriate the said amount. It is also alleged that the said account was opened by the appellant without any resolution of the Managing Committee of the school and that he submitted false and forged copy of the minutes of the meeting No.15
E dated April 26, 2008 with the seal of the Headmaster, Sambhunagar High School.

3. The appellant made an application for anticipatory bail under Section 438 of Code of Criminal Procedure, 1973 before the Sessions Judge, Alipore, District 24 Parganas (South).
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4. Learned Sessions Judge (I/C) after hearing the counsel for the appellant and the Public Prosecutor enlarged the appellant on anticipatory bail vide Order dated July 3, 2008. It was ordered that in the event of arrest, the appellant shall be
G released on anticipatory bail of Rs.5,000/- with two sureties of Rs.2,500/- each; one of such surety shall be local. The Sessions Judge (I/C) also put a condition that the appellant shall attend the police station once in a week for eight weeks. He also imposed usual conditions as laid down in Section 438 (2)
H Cr.P.C.

5. The complainant – Jayant Naskar approached the High Court for cancellation of anticipatory bail granted by the Sessions Judge (I/C) to the appellant. By the impugned order dated September 18, 2008, the High Court cancelled the anticipatory bail granted by the Sessions Judge (I/C).

6. On December 12, 2008 this Court while issuing notice stayed the operation of the impugned order. The order of Sessions Judge (I/C) granting anticipatory bail, thus, has remained operative.

7. We heard the learned counsel for the parties and perused the order of the High Court.

8. Although the High Court did notice in the impugned order that the considerations which should be in the mind of the court while considering the prayer for grant of bail are not the same for the purpose of cancellation of bail, yet we find that these considerations were not kept in mind and the order of the Sessions Judge granting anticipatory bail was set aside.

9. In *Dolat Ram And Ors.* vs. *State of Haryana*, (1995) 1 SCC 349, this Court held:

> "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

A 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. These principles, it appears, were
B lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted."

C 10. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that concession granted to him has been abused in any manner. No supervening circumstances
D have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order
E cannot be sustained.

11. Accordingly, appeal must succeed and is allowed. The impugned order dated September 18, 2008 is set aside. The appellant shall attend Gosaba Police Station once in a week
F as directed by Sessions Judge until completion of investigation. He is also directed to fully cooperate with the Investigating Officer and produce the entire record available with him.

K.K.T. Appeal allowed.