

14 SCOB [2020] HCD**HIGH COURT DIVISION****(CRIMINAL APPELLATE JURISDICTION)**

Criminal Appeal No. 6513 of 2019

Md. Ibrahim

----- Accused-appellant

Mr. Md. Hasibur Rahman, Advocate

-----for the appellant

-Versus-

Mr. Md. Mozibur Rahman, A.A.G.

.....For the State

The State

----- Respondent

Heard on: 23.07.2019,16.10.2019 and

Judgment on: 23.10.2019

Present:**Mr. Justice Md. Habibul Gani****And****Mr. Justice Md. Badruzzaman.**

Under section 9(4)(Kha) of Nari-O-Shishu Nirjatan Daman Ain 2000 (as amended in 2003);

FIR, Misuse of the privilege of bail, Ad-interim bail, Non-extension of bail, Section 498 of the Cr. P.C;

It is settled principle that bail is a very valuable right granted to an accused by the Court and once it is granted, it should not and ought not to be interfered with lightly except upon valid grounds and cogent reasons. ... (Para 10)

When an accused is enjoying the privilege of bail granted by the High Court Division for a limited period in a pending *rule* under section 498 of the Cr.P.C or in an appeal under special law, as the case may be, and he is regularly appearing before the Court below his bail cannot be cancelled and cannot be taken him into jail custody by the Court below only on the ground of non-extension of the period of bail by the High Court Division. If such situation arises, the Court below must wait for the result of the *rule* or the appeal, as the case may be, in which the accused was granted ad-interim bail.

... (Para 12)

JUDGMENT**Md. Badruzzaman, J:**

1. This appeal has been directed against order dated 19.06.2019 passed by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal No.5, Chattogram in Nari-O-Shishu Case No. 79 of 2019 arising out of Chandgaon Police Station Case No. 23 dated 16.05.2018 corresponding to G.R. No. 135 of 2018 under section 9(4)(Kha) of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), now pending in the said Tribunal.

2. Relevant facts for the purpose of disposal of this appeal are that one Md. Abu Bakkar Chowdhury as informant lodged FIR with Chandgaon Police Station, Chattogram against the accused appellant on the allegation of outraging modesty of his minor son namely Md. Ratul Sabur Chowdhury (aged about 08 years) and the allegation was registered with the said police station as Chandgaon Police Station Case No. 23 dated 16.05.2018 under section

9(4)(Kha) of Nari-O-Shishu Nirjatan Daman Ain, 2000. On the same date of lodging FIR on 16.05.2018, this accused-appellant was arrested by the police and was taken into custody. Thereafter, the accused appellant filed Criminal Miscellaneous Case No. 41360 of 2018 before this Court under section 498 of the Code of Criminal Procedure praying bail and after hearing, this Court vide order dated 07.09.2018 issued *rule* and enlarged the accused appellant on ad-interim bail for a period of 6(six) months.

3. Upon getting bail, the accused appellant was released from the custody and he was appearing before the Court below. In the meantime, the police, after investigation, submitted charge sheet under the aforementioned section of law against the accused-appellant and the case was transferred for trial to Nari-O-Shishu Nirjatan Daman Tribunal No.5, Chattogram. Then the accused-appellant voluntarily surrendered before the Tribunal on 19.06.2019 and prayed for bail and the Tribunal, upon hearing, vide order dated 19.06.2019 refused to accept his surrender, cancelled his bail and took him into jail custody with a finding that the bail which was granted in Criminal Miscellaneous Case No. 41360 of 2018 for a period of 6(six) months, in the meantime, has expired and as such, the accused-appellant is not entitled to continue with the bail granted by the High Court Division. Challenging the legality of the said order dated 19.06.2019 the accused-appellant has preferred this appeal and prayed for bail and this appeal was duly appeared in the list and after hearing, this Bench vide order dated 26.06.2019 admitted the appeal and enlarged the accused-appellant on ad-interim bail for a period of 3(three) months which is still continuing.

4. At the time of admission of this appeal, this Court found that though the accused-appellant was present before the Tribunal after obtaining bail from this Court but the Tribunal cancelled his bail and took him into jail custody on the plea that he could not produce bail extension order from this Division though there was no allegation of misuse of the privilege of bail against the accused appellant. In that view of the matter, this Court vide order dated 26.6.2019 directed the concerned learned Judge of the Tribunal to appear before this Court personally on 14.07.2019 and to explain his position in respect of his order of cancellation of bail of the accused-appellant which was granted by the High Court Division while there was no allegation of misuse of the privilege of bail against the accused-appellant as well as he, on surrender, was present before him. After receiving the order, the learned presiding Judge of the said Tribunal duly appeared before us and submitted his written explanation stating that he could not understand the spirit of law regarding bail granted by this Division and sought unconditional apology and after hearing the learned Judge in-person and by taking the matter leniently and accepting his unconditional apology we have exonerated him vide order dated 21.07.2019 and fixed this matter for hearing on merit.

5. Mr. Md. Hasibur Rahman, learned Advocate appearing for the accused-appellant submits that the Tribunal committed illegality in cancelling the bail of the accused-appellant without allegation of misuse of the privilege of bail granted by the High Court Division. Learned Advocate further submits that due to non-extension of bail by the concern Advocate of the High Court Division, the accused-appellant should not have suffered and the learned Judge of the Tribunal should have allowed the accused-appellant to continue with his bail because of the fact that he was very much present before the Tribunal and as such, the impugned order is illegal and liable to be set aside.

6. Mr. Md. Mozibur Rahman, learned A.A.G. appearing on behalf of the State found it difficult to refute the submission of the learned Advocate for the accused-appellant.

7. We have heard the learned Advocates and perused the materials available on record.

8. Considering the submissions of the learned Advocates and the materials on record a question arises whether, after granting bail by the High Court Division for a limited period, the Courts below have got any authority to cancel the bail on the ground of non-extension of bail by the learned Advocate of the High Court Division or whether, an ad-interim bail granted by the High Court Division to an accused for a limited period, can be cancelled, on its expiry, by the Courts below without any allegation of misuse of the privilege of the bail by the accused.

9. In the recent years, we have been noticing that a common practice has been developed among the learned Judges of the Courts below to the effect that in exercising criminal jurisdiction, they have been frequently cancelling the ad-interim bail of accused persons granted by the High Court Division and taking the accused persons into jail custody despite that accused persons have been regularly appearing before the Court below and very much present therein without any allegation of misuse. It appears that learned Judges are usually cancelling the bail on the ground that the accused persons had not extended the period of bail from the High Court Division. Due to such cancellation miscellaneous cases and appeals, as the case may be, are increasing day by day in the High Court Division and litigant public are also suffering a lot both financially and physically.

10. It is settled principle that bail is a very valuable right granted to an accused by the Court and once it is granted, it should not and ought not to be interfered with lightly except upon valid grounds and cogent reasons. In this regards we may refer the case of Hasina Akhter vs Md. Raihan reported in 66 DLR 298 where a Division Bench of this Court held that bail of an accused may be cancelled and committed him to jail for five reasons : i) where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted; ii) if he hampers the investigation iii) if he tempers with the evidence iv) if he runs away to a foreign country or goes underground or beyond the control of his sureties and v) if he commits acts of violence or revenge.

11. In that view of the matter, we are of the view that when an accused on bail is present before a Court on surrender or otherwise and there is no allegation of misuse of the privilege of bail, the concern Court is competent enough to allow the accused to continue with the bail granted by the higher Court. Mere non-extension of bail by the learned engaged Advocate of the higher Court cannot be a ground for cancelling his bail granted by this Court because a litigant cannot be suffered for the fault of his lawyer.

12. At trial stage of a criminal case, if any accused is enlarged on ad-interim bail by the High Court Division for a limited period and the rule or appeal remains pending before the High Court Division and the accused is regularly appearing before the Court below without any allegation of misuse of the privilege of bail, his bail cannot be cancelled by the Court below only on the ground of expiry of the period of bail or on the ground that the accused could not submit extension order from the High Court Division. In other words, when an accused is enjoying the privilege of bail granted by the High Court Division for a limited period in a pending *rule* under section 498 of the Cr.P.C or in an appeal under special law, as the case may be, and he is regularly appearing before the Court below his bail cannot be cancelled and cannot be taken him into jail custody by the Court below only on the ground of non-extension of the period of bail by the High Court Division. If such situation arises, the Court below must wait for the result of the *rule* or the appeal, as the case may be, in which the accused was granted ad-interim bail. We are of the view that there should be a proper

guideline in this regards from the Registrar General of Bangladesh Supreme Court to be followed by the inferior Courts of the country having exercising criminal jurisdiction.

13. Now we are going to giving our decision regarding the case in hand. Admittedly, the accused appellant obtained bail from this Court for a period of 6(six) months in a pending *rule* under section 498 of the Cr.P.C vide order dated 7.9.2018 and during pendency of the *rule* he had been appearing before the concern Magistrate regularly without any allegation of misuse and after submission of police report, the case has been transferred to Nari-O-Shishu Nirjatan Daman Tribunal and immediate after transfer, the accused appellant voluntarily surrendered before the Tribunal on 19.6.2019 with a prayer for continuation of his bail but the Tribunal cancelled his bail and took him into jail custody on the ground that the period of his bail was expired. We have carefully gone through the impugned order and other relevant papers. It appears that there was neither any allegation of misuse of the privilege of bail by the accused appellant granted by this Division nor any other ground for which his bail could be cancelled. Moreover, the *rule* in which the accused appellant was enlarged on bail was, at the relevant time, pending for disposal. The learned Judge of the Tribunal without appreciating the settled principle of law on this point cancelled the bail of the accused appellant on the ground which does not fall within the category for which a bail of an accused can be cancelled. Accordingly, we are of the view that the cancellation of bail by the learned Judge of the Tribunal was illegal and the same cannot be sustained.

14. Accordingly, we find merit in this appeal.

15. In the result, the appeal is allowed. The accused-appellant will continue with his bail till conclusion of the trial of the case.

16. However, the Court below would be at liberty to cancel the bail of the accused appellant if he misuses the privilege of bail in any manner.

17. The Registrar General of Bangladesh Supreme Court is hereby directed to issue a "General Circular" to all the Judges/ Magistrates having exercising criminal jurisdiction containing the following directions:

1. The Court below shall not cancel the bail of an accused granted by the High Court Division without any allegation of proven misuse of the privilege of bail by the accused.
2. When an accused is enjoying the privilege of ad-interim bail granted by the High Court Division for a limited period in a pending *rule* under section 498 of the Cr.P.C or in an appeal against under special law and he/she is regularly appearing before the Court below, his/her bail shall not be cancelled and cannot be taken him/her into jail custody by the Court below only on the ground that he/she could not submit bail extension order from the High Court Division.
3. In the event of unavailability of such extension order, the Courts below must wait for the result of the *rule* or the appeal, as the case may be, in which the accused was granted ad-interim bail.
4. Learned Judges of the Courts below shall not cancel bail of an accused granted by the High Court Division in pending rule or appeal until and unless the rule is discharged or the appeal is dismissed or in any way the accused violates any condition of bail, if any, imposed by the High Court Division at the time of granting bail"

18. Office is hereby directed to communicate a copy of this judgment to the Registrar General of the Supreme Court at once.