

**In Re: Renu Singh**

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**Court :** Kolkata

**Decided On :** Sep-12-1994

**Reported in :** 1995(1)ALT(Cri)13,(1994)2CALLT335(HC),99CWN19

**Judge :** Rabin Bhattacharyya and ;Nure Alam Chowdhury, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437, 438 and 439; ;  
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 306; ;[Constitution of India](#) -  
Article 227

**Appellant :** In Re: Renu Singh

**Advocate for Def. :** Dilip Dutta, ;Jayasree Chakraborty and ;Kabita Mukherjee,  
Advs. for the Opposite Party No. 1, ;Ashoke Sen, ;Sekhar Bose and ;Srenik  
Singhvi, Advs. for the Opposite Party No. 2 and ;S.P. Talukdar and ;

**Advocate for Pet/Ap. :** Tapan Roy Chowdhury, ;Thakurdas Roy Chowdhury,  
;Aloke Roy Chowdhury, ;Chanchal Dutta, ;S.K. Mitra, ;N. Ghosh, ;Souren Bose  
and ;Aslam Khan, Advs.

**Judgement :**

**Rabin Bhattacharyya, J.**

1. The defacto complainant Renu Singh, the wife of the deceased Ranjit, has come up before this Court for cancellation of anticipatory bail dated 18.8.1994,

granted by the learned Sessions Judge in charge, North 24-Parganas, in Criminal Misc Case No. 2274, in connection with Rajarhat Police Station Case No. 144 dated 7.7.1994, initially started under Section 306/34 of the IPC. But, subsequently a further section was added viz. Section 302 of the IPC for the Post Mortem report disclosing the death of Ranjit, a homicide.

2. However, to appreciate the viability of the claim, a brief resume of the facts is essential. The facts :

3. One Mohon Singh, since deceased, acquired substantial properties which included amongst others the factory and the landed properties. On his death, the properties left behind him devolved on his legal heirs. The death of Mohon dealt a death blow to the peace and happiness in the Singh's family for the dispute and dissension broke out amongst the members of the family over the control, possession and ownership of the properties left behind by Mohon, the deceased.

4. Though the forensic battle commenced for acquisition of ownership, yet the dispute ended in a compromise on certain terms. There was again revival of the dispute when the condition of the amicable settlement was repudiated by the opposite parties by the reason of their failure to honour the payment over which much altercation ensued preceding the date of occurrence. Ranjit, the deceased, forced his entry into the flat in 'Pull man Complex' where he stayed on 6.7.94 along with his friend but in a different flat.

5. In the morning following, Renu along with other family members broke open the door of the said flat and found Ranjit lying in a pool of blood in a bathroom with kripan beside him. Ranjit succumbed to his injuries when a case on the basis of the complaint of Renu disclosing the death a suicide was reported which generated the above noted P.S. case.

6. In the meantime, the opposite parties preferred an application for anticipatory bail, the hearing of which was adjourned to 18.8.94 admitting the opposite parties to an interim anticipatory bail. It was finally disposed of, as directed by the Hon'ble Court, which, has now become the sore of this litigation.

7. To contradict the claim, none of the opposite parties has put in any affidavit-in-opposition.
8. We have been addressed by the parties at length for and against the impugned order which we will discuss threadbare in our order.
9. Mr. Roy Chowdhury appearing to canvass the prayer for cancellation of bail has dexterously argued that the defacto complainant can very well present an application for cancellation of bail, since there is no bar under the law.
10. Mr. Dutta and Mr. Sen are sought to have refuted the contention of Mr. Roy Chowdhury that the defacto complainant is devoid of right to prefer an application for cancellation of bail as the matter is confined between the State on one hand and the accused on the other.
11. We cannot accept the contention to be water and air tight as neither Mr. Dutta nor Mr. Sen by application or otherwise challenged the decision of the learned Sessions Judge in charge on that count. After careful consideration of the position of law, we are of the view, the defacto complainant is clothed with right to put up a claim for cancellation of bail when craving for justice. We can draw an analogy in support for the principle of law laid down in *Bhagwant Singh v. Commissioner of Police and Anr.*, : 1985 CriLJ1521 , where the Court held:  
  
'In a case where the Magistrate to whom a report is forwarded under Sub-section (2) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Criminal P.C. or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report can be spelt out, unless such person is the informant who has lodged the F.I.R. But, even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when

the report is considered by the Magistrate for the purpose of decisions what action he should take on the report.'

12. Therefore, if the informant or the complainant is entitled to p notice before the Magistrate drops a proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, there could be no reason to dismiss summarily the claim of the defacto complainant seeking cancellation of bail.

13. Similar situation arose in *Pokeram v. State of Rajasthan*, 1985 Cr. LJ 1175, where the Supreme Court did not reject the prayer of the defacto complainant soliciting cancellation of bail, although the Supreme Court observed that it was conceded and not questioned before the Supreme Court, the Court did not refer to them.

14. Thus, we are of the view, that a defacto complainant enjoys a right to prefer an application for cancellation of bail for which the Court must make a proper evaluation of the facts and circumstances behind the prayer for cancellation of bail.

15. Mr. Roy Chowdhury has vigorously challenged the impugned order, which according to him, is perfunctory and goes against all the canons of law. He is eloquent in his submission that the learned Sessions Judge in charge failed to weigh the pre-occurrence and post-occurrence materials in adjudging the prayer for anticipatory bail.

16. The materials, according to Mr. Roy Chowdhury, were prima facie abundant to inspire the confidence of the Court that the discretion exercised by the learned Sessions Judge in charge in granting anticipatory bail is wholly unwarranted.

17. All the learned Advocates are vocal in their respective submissions that judicial discretion for granting bail is the main fabric.

18. They relied on *Shri Gurbaksh Singh Sibba and Ors. v. State of Punjab*, : 1980 CriLJ1125 . The celebrated judgement of the Hon'ble Supreme Court is a path finder for the Court under what circumstances bail should be granted :

'Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait jacket.'

19. Mr. Roy Chowdhury has emphasised in his argument that the principle of law in regard to granting of bail has been sacrificed, at the altar Of judicial discretion. To gain ground, he has read through the order dated 14.7.94, 20.7.94, 17.8.94 and 18.8.94. It is manifest from the order No. 2 dated 20.7.94 that not only peculiar but also an absurd prayer was cultivated by the learned Public Prosecutor of North 24-Parganas for medical report from the expert. This prayer according to Mr. Roy Chowdhury, in the state of materials should not have been made. How a further medical report could be obtained from the expert when the P.M. report had not been challenged as spurious and corpus delicti was not available

20. The P.M. report shows on autopsy that there were two incised wounds and the opinion of the Dr. was that the death was due to the effect of wounds which are anti-mortem and homicidal in nature.

21. In the background of the above, the prayer for further medical report from the expert in our view is not a healthy prayer. The Post Mortem report, in absence of any other materials on record, shows prima facie that it was a case of homicide which at any rate cannot be displaced in absence of any evidence to the contrary that it was a case of suicide merely on the allegation of the complainant. It passes all comprehension to believe that a man could not ascertain the cause of death unless ascertained or determined by an expert. A kripan (sword) albeit found beside the deceased cannot afford to lend support or irresistible conclusion that the death of Ranjit was a suicide.

22. The above failed to earn any consideration from the learned Sessions Judge in charge whose observation that its fate would be decided at the time of trial is unacceptable.

23. We are of the view, that he bypassed the Post Mortem report in anticipation of its fate to be decided at the time of trial which is one of the relevant considerations that weighed with him in granting the anticipatory bail.

24. There are other relevant considerations that carried the learned Sessions Judge in charge were the status of the opposite parties, dependency of the family members and the employees of the factory. They are not at all relevant considerations in the face of offence alleged. Besides, we may borrow our wisdom from *Pokeram v. State of Rajasthan* (supra).

25. Yet, another consideration that found its way in the order is the suicide. Even, if it is assumed to be true, in the background of the materials disclosed in the C.D., the learned Sessions Judge in charge should acted with circumspection. In *Gurbaksh Singh Sibba's case* (supra), it has been held 'that if malafides are shown, anticipatory bail should be granted in the generality of cases, but it is not easy to appreciate why an anticipatory bail must be rejected unless an accusation is shown to be malafide'. The above decision is still holding the field.

26. The alleged suicidal death sprang up from the complaint of Renu does not afford any ground for anticipatory bail to the exclusion of weighty materials on record. A Court is always competent in the matter of granting bail to exercise its discretion and the materials in the C.D. must not be left out of consideration. In the premises, the learned Sessions Judge in charge failed to take into account that the Singh's family was lashed by the unfavourable blow of wind which led to a turmoil. It was a disturber of peace. It is pre-eminently stands out from the materials in the C.D. that the situation was tense and unhappy.

27. As indicated above, that the case assumed a peculiar feature by the reason of medical report that the death was homicidal.

28. In the perspective of the above, judicial discretion should be exercised on payment of due premium to the prima facie materials towering from the C.D.

29. We do not depart from the view taken by the learned Sessions Judge in charge that mere mentioning of name in the FIR should not be the ground to

discard the prayer for bail. It varies from case to case and the materials disclosed.

30. Again, we cannot help observing for the materials revealed from the CD. that Ranjit, the deceased, much ahead of the occurrence informed the police of his apprehension not only about his life but also the safety of the members of his family, which unfortunately escaped the attention of the learned Sessions Judge in charge.

31. The totality of the prima facie materials disclosed in the C.D., some of which we have listed above, are merely illustrative and they should have received due consideration from the Court.

32. Mr. Dutta has argued with much vehemence that a superior court could hardly interfere with the order unless there be grave miscarriage of justice and adverse to the right of the investigation.

33. In support of his contention, he had referred to certain authorities. We do not like to burden our order with such decisions as there is, no dispute about the proposition of law.

34. The learned Sessions Judge in charge ought to have appreciated the factual exposure of the case within the realm of Section 438 of the Code of Criminal Procedure. But where, as here, the learned Sessions Judge in charge accorded the prayer for anticipatory bail to them completely extraneous to the provisions of anticipatory bail.

35. Mr. Sen, appearing in support of the O.P. No. 2, has made a bold submission that there is no prayer from the investigation for cancellation of bail and what useful purpose would be served for the investigation to take the petitioners into custody. There is some substance in the contention but for the materials disclosed and the shadow projected, the case requires full investigation, for which, the custody has been sought for, as evident from the memo of evidence.

36. For the foregoing reasons, we are unable to accede to the submission of Mr. Sen.

37. Mr. Talukdar, appearing for the other accused has endorsed almost a similar submission, as endorsed by Mr. Dutta.

38. Mr. Dutt has laid stress on Jaginder Singh v. State of U.P., 1994 Cr LJ 1981 for support, but after going through the judgement with attention, we are of the view that in the context of the facts involved in the case at hand, the ruling under reference is inapplicable. The decision relates to post-arrest right of the accused unconnected with anticipatory bail.

39. Mr. Talukdar relied on Bhagirath Singh S/o Mahipat Singh Judja v. State of Gujarat, : 1984 CriLJ160 , to draw inspiration that cancellation of bail should not be by way of punishment even if prima facie case is established. But relevant materials, if not considered in an application for anticipatory bail, the decision maintains a silence about the course to be adopted by the Courts; There the Lordships could not accept the order as founded on irrelevant considerations.

40. Mr. Roy Chowdhury to undo the effect of the order has relied on Kiran Debi v. State of Rajasthan and Anr., 1988 SCC (Cri) 106: 1987 (Supp) SCC 549, where the ratio decidendi was that anticipatory bail should not be granted till completion of the investigation.

41. Thus, in consideration of relevant submissions made by learned Counsels for the parties, we cannot accept the order of the learned Sessions Judge in charge as it goes contrary to the provisions of Section 438 and, therefore, we cannot agree with the impugned order.

42. A very interesting point of law has been raised by Mr. Dutta that anticipatory bail has outlived its purpose as the opposite parties voluntarily appeared before the Court of the learned Magistrate who were enlarged on bail. It is trite saying for the legion of precedents since alive in the field that anticipatory bail does not survive if the accused surrenders or appears in Court.

43. In our view, the accused when appears before the learned court of Magistrate for bail anticipatory bail becomes dead letter.

44. Therefore, in the advent of an order under Section 437 of the Cr.P.C. passed rightly or wrongly, the anticipatory bail granted by the learned Sessions Judge in charge loses its all force and momentum.

45. The matter when objectively considered shows that the learned Magistrate who granted bail to them under Section 437 of the Cr.P.C. had no jurisdiction to pass such an order in the advent of anticipatory bail already granted. The order of the learned Magistrate is a replica of anticipatory bail which Section 437 does not envisage.

46. It is needless to mention that anticipatory bail will become operative in the event of arrest of the petitioners.

47. In the light of the above, there could be no shred of obscurity that appearance of the accused on their own before the learned SDJM craving for bail is unwarranted. The law does not encompass that a person when, enlarged on anticipatory bail could have any right to apply for ordinary bail. It has not been provided by the Code even avertly and covertly that a person can enjoy both, anticipatory bail and a bail. The learned Counsels for the parties could not cite any authority that during the currency of the anticipatory bail, a person has the right to approach the learned Magistrate for ordinary bail.

48. In our view, if it is allowed to be done, the anticipatory bail will be reduced to a mockery as it can never be the source for bail under Section 437. It will open the flood gate of machination for bail and the object of Section 438 of the Cr.P.C. will be totally frustrated.

49. We are of the view, on perusal of both the sections, that there is no nexus between the two as both the sections stand on an independent footing. The considerations in both the sections are different. It is not complementary to each but factually, legally and mutually is exclusive of each other.

50. To be precise, one relates to pre-cognizance stage while the other relates to post-cognizance stage.

51. The anticipatory bail, if granted by the Sessions Judge or the High Court, as the case may be, cannot be a ground for bail under Section 437 of the Cr. P.C. The decision in Gurbaksh Singh Sibba (supra) is a pointer.

52. In the background of the above set of facts, the question of 'appearance' assumes no relevance, it is manifest that Section 437 of the Cr.P.C. was not brought into play to enlarge any person on bail who were neither arrested nor detained and who are enlarged on anticipatory bail.

53. Besides, the learned SDJM when already came to the conclusion that an anticipatory bail continues till the conclusion of the trial or till it is cancelled, there could be no valid reason to wield jurisdiction under Section 437 of the Cr.P.C. The order of learned SDJM dated 22.8.1994 is a carbon copy of the order of anticipatory bail granted by the learned Sessions Judge in charge on 18.8.94.

54. It is evident, therefore, that there was no application of mind by the learned SDJM of the matter while considering the prayer for bail, in particular, when he read the order of the anticipatory bail. In our view, the Court of the learned SDJM is not a Post Box which has its independent jurisdiction for granting bail and the order that to be passed must not be influenced by the materials coming within the) pale of anticipatory bail.

55. A legitimate question has been breached by the learned Advocates for the parties about the extent of power of the High Court to interfere with the order of the learned SDJM as in the instant case, when it is not the subject matter of adjudication before this Court.

56. Mr. Roy Chowdhury has laboriously researched in his argument that the superior court in exercise of inherent power under Section 482 can very well interfere with the order when stricken with perversities and illegalities.

57. Mr. Sen, Mr. Dutta and Mr. Talukdar have argued with all adroitness and with full dexterity that the superior court is not clothed with jurisdiction to interfere with an order overriding the existing provision viz. Sections 397 and 401 of the Cr.P.C.

58. In answering the claim, we have on record that this matter came up at the instance of Mr. Dutta who advanced an argument that the O.Ps were enlarged on bail by the learned SDJM.

59. Accordingly, direction was given on the petitioner to produce the said order of the learned SDJM before this Court. It will be apposite to mention that an argument has been advanced on it and, therefore, this Court is competent and is perfectly within its jurisdiction to pass an appropriate order when decision was invited. This is one aspect of the matter. The other aspect of, the matter is that a superior Court in exercise of power under Article 227 cannot only look into the same but also can adjudge it.

60. Then again, a power always inheres with the High Court which can be exercised under Article 227 of the [Constitution of India](#). Even, an extra ordinary revisional power both in the civil and criminal jurisdiction could be exercised by the High Court to prevent the abuse of the process of the Court, according to the need. In our view, the superior Court has got ample power to interfere with an order, as in the instant case, the order of the learned SDJM dated 22.8.94, the object being to prevent the miscarriage of justice. We have already come to the conclusion that the anticipatory bail dated 18.8.94, though lost its force cannot be allowed to stand for the foregoing reason and the order of the learned SDJM is totally bad in law in the face of the anticipatory bail. The basic thing having disappeared (anticipatory bail dated 18.8.94) its repetition in the court of the learned SDJM will not advance the cause.

61. Concluding, therefore, we hold that the order dated 18.8.94 of the learned Sessions Judge in charge is set aside and the order dated 22.8.94 of the learned SDJM is also set aside. We direct the learned Sessions Judge himself to hear the application for anticipatory bail within 10 days from the date of receipt of the order afresh. In taking decision he will not be influenced by the observations made by ourselves in the order. He will take a decision of his own, independent of the observations made by us but in accordance with law.

62. With the above observations, we dispose of the application.

63. Let xerox copies of this order be made available to the respective counsels on usual undertaking.

**Nure Alam Chowdhury, J.**

64. I agree.

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