THE HIGH COURT OF SIKKIM : GANGTOK

CRIMINAL REVISION PETITION NO.2 OF 2005

(Arising out of the impugned orders dated 10th March, 2005 passed by Shri B. C. Sharma, Chief Judicial Magistrate (South & West), Namchi (I/C) in Criminal Misc. Case Nos.27 and 28 of 2005)

State of Sikkim ...... **Petitioner**

versus

Utpal Dorjee Yongda,
R/o Tikjuk, Gayzing,
West Sikkim. ...... **Respondent/Accused**

AND

CRIMINAL REVISION PETITION NO.3 OF 2005

State of Sikkim ...... **Petitioner**

versus

Pawan Minda,
S/o Late Gopiram Minda,
Melli Bazar,
South Sikkim. ...... **Respondent/Accused**

For the State petitioners : Shri J. B. Pradhan, Public Prosecutor.

For the respondent accuseds : Messrs K. T. Bhutia assisted by B. R. Pradhan.

PRESENT: THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 6th April, 2005.

DATE OF ORDER : 15TH APRIL, 2005.

ORDER

A. P. Subba, J.

Since facts of the above revision petitions are similar and the question of law raised by the petitioner in both

the petitions are also identical they are heard together and being disposed of by this common order.

2. In both the Criminal Revision Petitions filed by the State of Sikkim under section 397 read with sections 439/482 of the Criminal Procedure Code, 1973, the impugned orders dated 10th March, 2005 passed by Shri B. C. Sharma, District & Sessions Judge, South & West, Namchi in his capacity as in-charge of the Court of the Chief Judicial Magistrate, South & West, Namchi in Criminal Misc. Case no. 27 of 2005 Utpal Dorjee Yongda vs. State of Sikkim and Criminal Misc. Case no. 28 of 2005 Pawan Minda vs. State of Sikkim are the subject matters of challenge.

3. As per the facts set out in the above two Criminal Revision Petitions both the respondent accuseds were arrested following the written FIR lodged by the Revenue Officer, Namchi Sub-Division, South district, Namchi. In the written FIR lodged on 7th March, 2005 with the Officer In-Charge, Namchi Police Station the Revenue Officer alleged that on going through the records at the Office of the Registrar, South district he found that the land bearing plot no.122(P) situated at Melli block was registered in the name of Shri Utpal Dorjee Yongda of Gayzing on 2nd March, 2005 by forging signature of Revenue Supervisor in the spot verification report and the same was later on cancelled. It was also found by him that the names of Shri Pawan Minda, Shri Dhurendra Prajapati and Shri Surjay Tamang found mention in the said forged spot verification

report. It may be noted that Shri Utpal Dorjee Yongda is the respondent accused in Criminal Revision Petition no.2 of 2005 and Shri Pawan Minda is the respondent accused in Criminal Revision Petition no.3 of 2005.

4. On the basis of the above information, Namchi Police Station Case no.24(3)05 dated 7th March, 2005 was registered under sections 420/468/471 read with section 34 of the Indian Penal Code against the respondent accuseds and others and the investigation was taken up.

5. In course of the investigation, the respondent accused Utpal Dorjee Yongda and Pawan Minda were arrested on 9th March, 2005 and were produced before the Chief Judicial Magistrate, South & West (in-charge) at Namchi on 10th March, 2005. On the remand application filed by the I.O. the Chief Judicial Magistrate, South & West (in-charge) remanded the accused persons till 14th March, 2005. On the same day, i.e., on 10th March, 2005 after the remand orders were passed the Chief Judicial Magistrate, South & West (in-charge) took up hearing of the bail applications filed by the respondent accuseds on the pervious day, i.e., the 9th March, 2005 under section 437 of the Criminal Procedure Code and released them on bail.

6. The case put forward by the State petitioner before the learned Court during the bail hearing was that the investigation having just begun was yet to be completed and certain important documents relating to the said transaction were required to be seized. The learned Court on hearing the

submissions made by the parties and also on consideration of the 'entire facts and circumstances of the case' came to the conclusion that it was a fit case for grant of bail and accordingly released the respondent accuseds on bail under certain terms and conditions, namely, that they shall report to the I.O. of the case as and when required, that they shall not enter within the territorial jurisdiction of the South district and that they shall not temper with the prosecution witnesses in any manner whatsoever.

It is contended that the learned Court failed to appreciate the fact that the investigation had then just begun, important documents relating to the transaction were yet to be seized and also the fact that the respondent accuseds were likely to temper with prosecution evidence if released on bail. It was further contended that the learned Court had passed the remand order before taking up hearing of the bail application after proper application of mind and as such it was not proper on the part of the learned Court to pass the impugned bail orders releasing the respondent accuseds on bail on the same day without there being any material change in the circumstances of the case.

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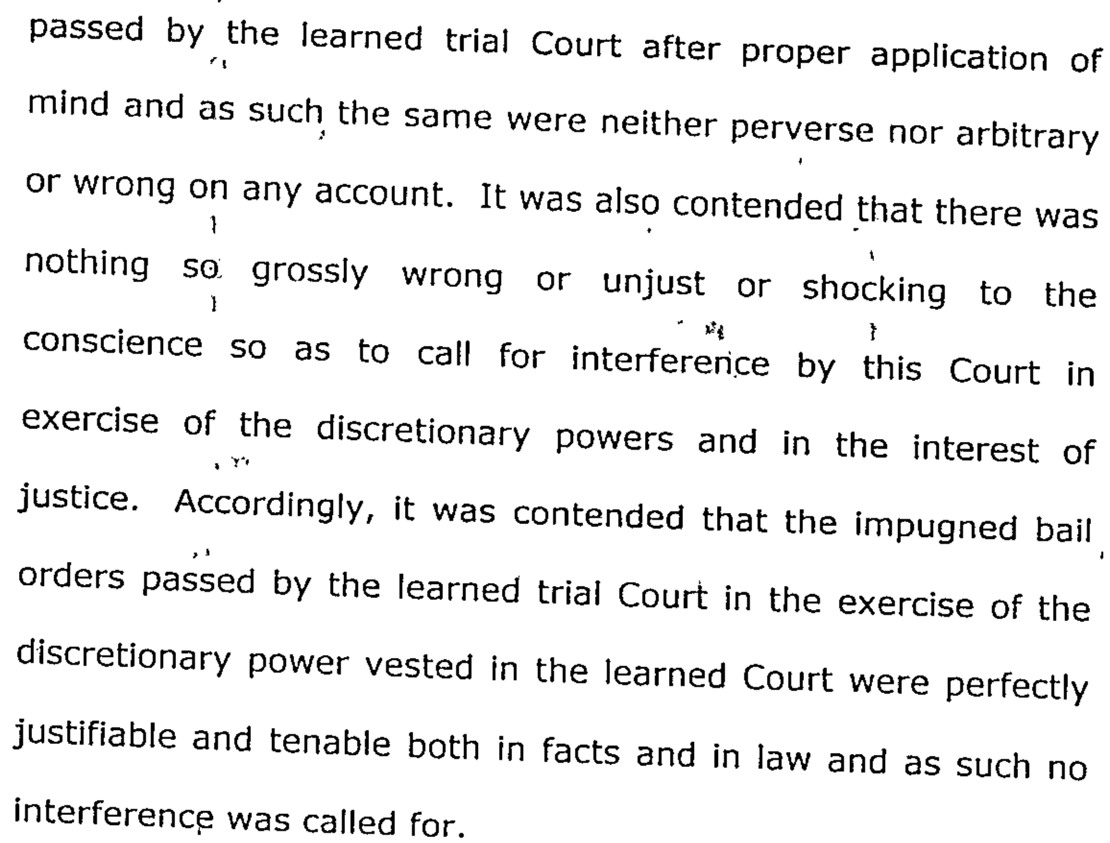
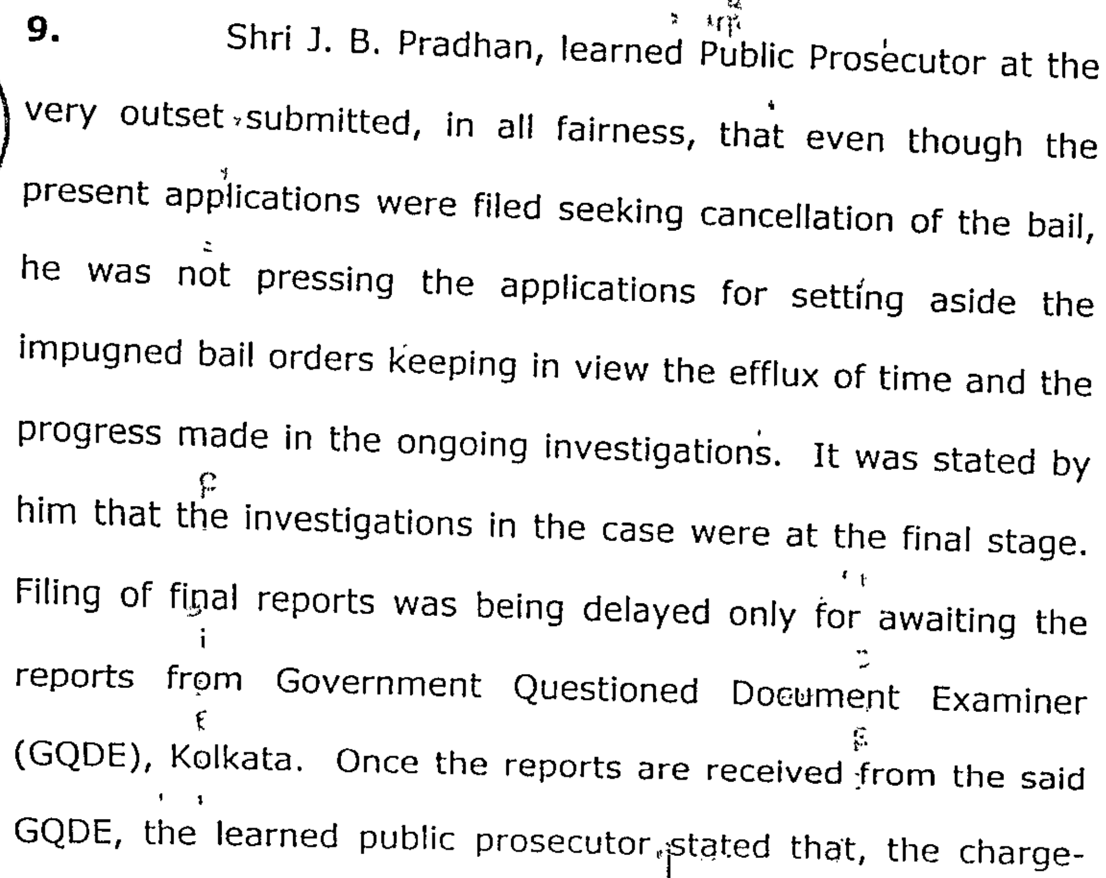
7. The respondent accuseds in both cases filed show cause and mainly contended that the impugned bail orders being interlocutory orders fall outside the ambit of section 397 Cr.P.C. and as such the revision petitions were not maintainable. It was stated that the impugned orders were



passed by the learned trial Court after proper application of mind and as such the same were neither perverse nor arbitrary or wrong on any account. It was also contended that there was nothing so grossly wrong or unjust or shocking to the conscience so as to call for interference by this Court in exercise of the discretionary powers and in the interest of justice. Accordingly, it was contended that the impugned bail orders passed by the learned trial Court in the exercise of the discretionary power vested in the learned Court were perfectly justifiable and tenable both in facts and in law and as such no interference was called for.

8. Shri J. B. Pradhan, learned Public Prosecutor for the State petitioner and Shri K. T. Bhutia assisted by Shri B. R. Pradhan, learned counsel for the respondent accuseds were heard.



9. Shri J. B. Pradhan, learned Public Prosecutor at the very outset submitted, in all fairness, that even though the present applications were filed seeking cancellation of the bail, he was not pressing the applications for setting aside the impugned bail orders keeping in view the efflux of time and the progress made in the ongoing investigations. It was stated by him that the investigations in the case were at the final stage. Filing of final reports was being delayed only for awaiting the reports from Government Questioned Document Examiner (GQDE), Kolkata. Once the reports are received from the said GQDE, the learned public prosecutor stated that, the charge-

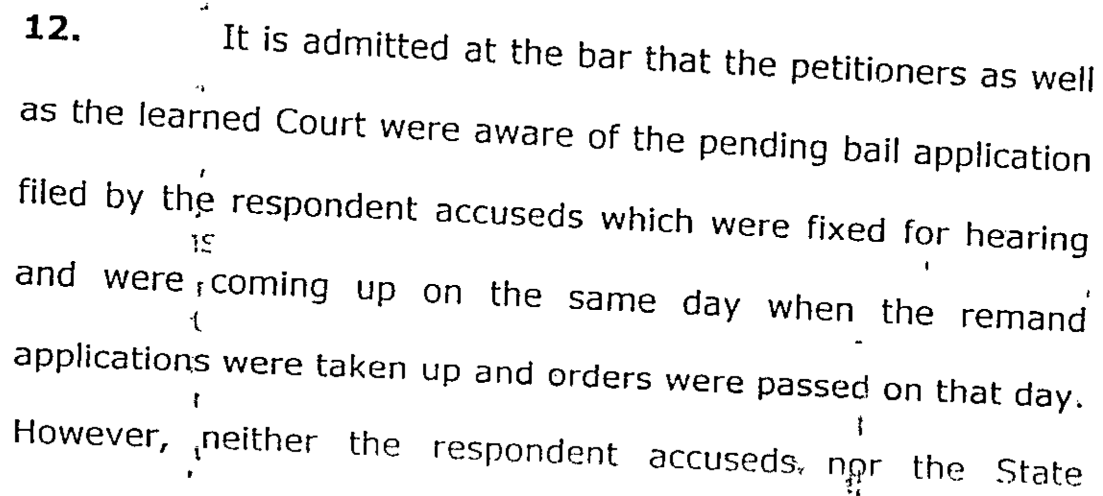
sheets will be filed. In view of this, it was his further submission that no useful purpose would be served by seeking cancellation of the impugned bail orders and taking the respondent accuseds into custody at this stage. His further submission was, however, to the effect that even though he was not pressing the application for cancellation of the impugned bail orders he was making a prayer for an observation/declaration that the impugned orders were passed by the learned trial Court in improper exercise of discretion vested in it by law and as such the same were bad in law. The learned counsel appearing on behalf of the respondent accuseds submitted that the prayer of the petitioner to the Court to make a note or to observe in the shape of declaration that the impugned orders were illegal for the reasons as stated by the learned counsel for the State petitioner was un-called for and unwarranted in the circumstances of the case.

10. On a consideration of the submissions made by the parties and on perusal of the materials on record, I am satisfied that the main relief sought having become virtually infractuous in the face of the factual position with regard to the ongoing investigation as highlighted by the State petitioner and already indicated above, it was appropriate on the part of the petitioner not to press for setting aside of the impugned orders. However, with regard to the other prayer regarding the observation to be made to the effect that the impugned orders are illegal, the question that arises is whether it would not be a

futile exercise to go into the legality or otherwise of the impugned orders only for an academic purpose. The learned public prosecutor in his submission has, of course, made it clear that the observations or declarations sought for and to be made by this Court are only for future guidance in similar cases as it might not be of any practical value in the present case. The anxiety of the learned public prosecutor is understandable and at the same time it is pertinent to note that such an observation as sought for can be made in order to correct miscarriage of justice arising from mis-conception of law, irregularity of procedure and similar other infirmities, in exercise of revisionsal jurisdiction of this Court under section 401 Cr.P.C. or under other enabling provisions.

11. Thus coming to the propriety or otherwise of the impugned orders, it may be noticed the learned Chief Judicial Magistrate, South & West (in-charge) took up the remand applications and the bail applications separately at different hours of the same day and passed separate orders. The contention of Shri Pradhan, learned public prosecutor is that since the remand orders were passed after proper application of mind, the learned Court ought not to have released the accused persons on bail by subsequently taking up the hearing of the bail applications on the very same day. Therefore, the question is whether the impugned orders suffer from any illegality or irregularity on this account.

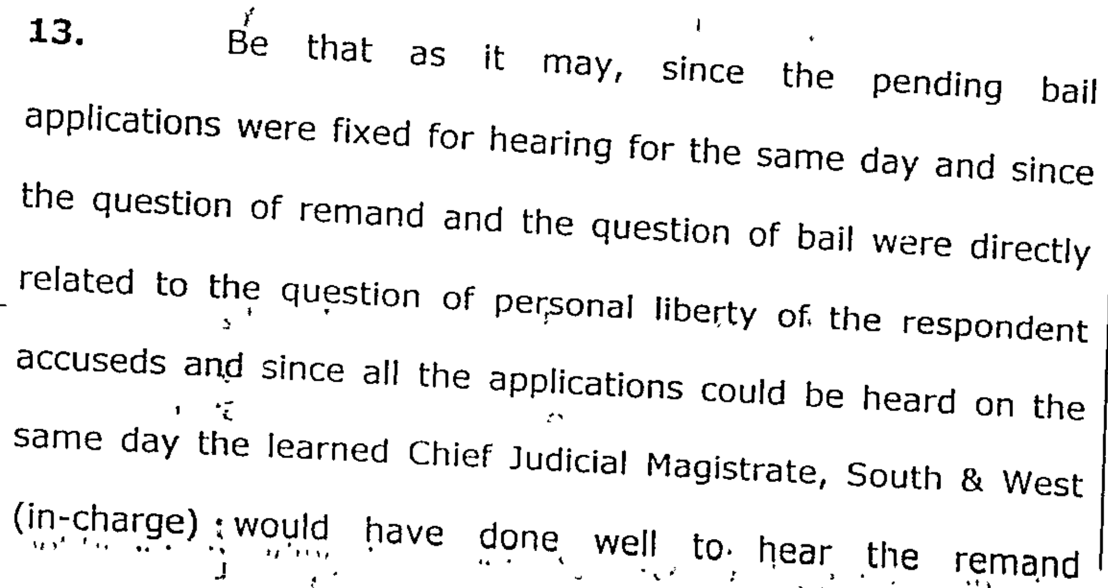
The records show that the respondent accuseds were arrested on 9th March, 2005 on charges of having committed offences under sections 420, 468 and 471 which are punishable with imprisonment up to 7 years in the maximum and were produced before the Court of Chief Judicial Magistrate, South and West (in-charge) on 10th March, 2005 in terms of section 167(2) of Cr.P.C. for obtaining further remand. On the applications so made by the I.O., the learned Chief Judicial Magistrate, South & West (in-charge) passed the orders of remand authorising further detention of the respondent accuseds in police custody for 4 days till 14th March, 2005. Thereafter, the learned Court took up hearing of the bail applications which were filed on the pervious day, i.e., 9th March, 2005. On hearing both parties and on perusal of the case papers and also on taking note of the further progress made in the ongoing investigation, the learned Court came to be of the opinion that the respondent petitioners could be released on bail and accordingly passed the impugned bail orders on certain terms and conditions as already indicated hereinabove.



12. It is admitted at the bar that the petitioners as well as the learned Court were aware of the pending bail application filed by the respondent accuseds which were fixed for hearing and were coming up on the same day when the remand applications were taken up and orders were passed on that day. However, neither the respondent accuseds nor the State

petitioner including I.O. seem to have made a mention of it either at the time of obtaining remand order nor at the hearing of the bail applications. Admittedly the remand orders and the bail orders were passed on the same day within short interval but without any reference of one to the other. There is no doubt that it is settled practice that whenever an application for remand of an accused is moved on behalf of the prosecution an application for opposing the prayer for further remand can also be made by the accused and both can be heard together. Indeed, the prosecution has to be prepared for the opposition of the remand application and also for prayer for release of the accused on bail. In the present case, the remand orders seem to have been passed by the Chief Judicial Magistrate, South & West (in-charge) mechanically on the body of the applications filed by the I.O. It does not appear from these orders that the accused had any opportunity to resist the remand prayer or to bring to the notice of the Court that the application for bail filed by the respondent accuseds were fixed for hearing on the same day.

13. Be that as it may, since the pending bail applications were fixed for hearing for the same day and since the question of remand and the question of bail were directly related to the question of personal liberty of the respondent accuseds and since all the applications could be heard on the same day the learned Chief Judicial Magistrate, South & West (in-charge) would have done well to hear the remand



applications as well as the bail applications at a time in one hearing instead of hearing them separately at different hours of the same day and passing different orders. Needless to say, it is desirable that a Court of Magistrate while taking up an application filed by the police for remand of the accused to custody should take note of the bail application, if any, already filed and pending so as to hear the two matters together and dispose them of by a common order to avoid passing contradictory orders. Therefore, it is clear that even though the existence of a remand order does not, strictly speaking, operate as a bar to hear the bail application it appears, in the peculiar facts and circumstances of the case, that the manner in which the learned Chief Judicial Magistrate, South & West (in-charge) disposed of the two related matters taking them up at different intervals on the very same day leaves much to be desired. From the existing circumstances, it is apparent that Shri B. C. Sharma, District & Sessions Judge, South & West, Namchi who was in-charge of the Court of Chief Judicial Magistrate, South & West, Namchi at the relevant time utterly failed to maintain the procedural standard in the matter leading to lack of transparency in the judicial process for which this Court expresses its deep displeasure.

Keeping in view the fact that the State petitioner has not pressed for any further order and also the fact that the investigation is at final stage and no purpose would be served by setting aside the impugned bail order, I do not consider it

essential under the peculiar facts and circumstances of this case to make any further order.

14. With the above observations, both the Criminal Revision Petitions stand disposed of.

Records of the lower Court may be returned forthwith along with a copy of this order.

Sd/-
(A. P. Subba)
Judge
15-04-2005

CERTIFIED TO BE TRUE COPY

15/4/05

Assistant Registrar
High Court of Sikkim
Gangtok