

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 32 (S-3)/2022

**PRESENT : Sri Chatra Bhukhan Gogoi
Sessions Judge,
Sonitpur, Tezpur.**

Sri Rup Jyoti Baruah, LAC, DLSA, Sonitpur at Tezpur.

..... **Petitioner.**

- Versus -

1. State of Assam

..... **Respondent.**

A P P E A R A N C E

For the Petitioner : Sri Rup Jyoti Baruah, LAC.

For the State : Sri Munin Ch Baruah, P.P.

Date of Hearing : 07-09-2022.

Date of Judgment : 07-09-2022.

J U D G M E N T

1. This is an application u/s 397/399 of Cr.P.C. against the impugned order dated 30-08-2022 passed by Smti D. Nath, learned JMFC, Sonitpur, Tezpur in Jamuguri P.S. Case No. 128/2021 u/s 448/326 IPC.

2. It is pleaded in the petition that as per direction of the Hon'ble High Court in WP(C) Suo Motu Case No. 08/2018, the petitioner filed application before the learned Magistrate for change/ alteration of bail condition of the accused person which was rejected by the learned Magistrate by assigning reasons vide order dated 30-08-2022.

3. Being highly aggrieved and dissatisfied by the said order dated 30-08-2022 passed by learned Magistrate, the petitioner preferred the present revision petition in order to invoke the powers granted u/s 440(2) Cr.P.C.

4. Point for determination:

Whether the impugned order dated 30-08-2022 passed by learned JMFC, Sonitpur, Tezpur in Jamuguri PS Case No. 128/2021 is incorrect, illegal, improper and without jurisdiction making it liable to be revised, modified or set aside?

DISCUSSION, DECISION AND REASONS THEREOF.

5. I have heard the arduous contention of the learned lawyers appearing for both sides and carefully scanned the impugned order dated 30-08-2022 passed by learned JMFC, Tezpur, Sonitpur in Jamuguri PS Case No. 128/2021 as well as the other materials available in the case record.

6. Now, the matter having been drawn to the attention of this court and on perusal of Section 440(2) Cr.P.C. it transpires that only Hon'ble High Court or the court of Sessions may have the power to reduce bail condition. The Magistrate has no power to exercise power u/s 440(2) Cr.P.C. As such, there is no illegality or infirmity in the order of the learned Magistrate. Nevertheless, since the power has been vested with this court and in view of the order of the Hon'ble High Court passed in WP(C) (Suo Motu) No. 08/2018, the condition of bail is required to be modified by this court.

7. On perusal of the record, it transpires that on 16-10-2021 accused Lukash Kerketa was allowed to go on bail of ₹10,000/- with suitable surety of like amount i/d jail, on completion of statutory period of 90 days in judicial custody but, in spite of granting bail, accused is unable to release himself from jail by submitting bail bond even after elapse of almost one year from the date of granting bail.

8. Case record also reveals that on 07-09-2022 I.O. has submitted charge-sheet against accused Lukash Kerketa u/s 448/326 IPC and accordingly, learned Magistrate took cognizance of the offences and issued process against the accused person.

9. As such, having heard the learned lawyers appearing for both sides and taking into consideration the order of the Hon'ble High Court passed in WP(C) (Suo Motu) No. 08/2018, the bail condition of accused has been altered/modified and accused Lukash Kerketa is allowed to go on P.R. Bond of ₹10,000/- (Rupees Ten Thousand) on condition that he shall regularly attend court and shall not make any attempt direct or indirect to influence any of the prosecution witnesses and in the event of any such credible information having been received by court, his P.R. Bond will be automatically canceled.

10. In view of the foregoing discussion and reason, the order dated 30-08-2022 is modified to the extent indicated above. Consequently, the revision is allowed.

11. Let the case record of Jamuguri PS Case No. 128/2021 be sent back along with a copy of this Judgment to the Court of learned Chief Judicial Magistrate, Tezpur, Sonitpur for information and doing the needful.

12. Judgment is signed, sealed and delivered in the open court on this **07th day of September, 2022.**

(C.B. Gogoi)
Sessions Judge,
Sonitpur: Tezpur.

Dictated and corrected by me.

(C.B. Gogoi)
Sessions Judge,
Sonitpur, Tezpur.