

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE UDAY KUMAR

CRR 1248 OF 2018

**BHARATI JANA
-VS-
STATE OF WEST BENGAL & ANR.**

For the Petitioner : Mr. Anupam Kr. Bhattacharya
Mr. Dilip Kumar Mondal
Mr. Mrityunjay Saha

For the Opposite Party No.2 : Mr. Prabir Kr. Mitra, Sr. Adv.
Ms. Sudarshana Srivastava

For the State : Mr. Joydeep Roy
Mr. Dipankar Paramanick

Hearing concluded on : 13.02.2026

Judgment on : 06.03.2026

UDAY KUMAR, J.: –

1. The petitioner before this Court, an elderly widow and a "victim" within the statutory contemplation of Section 2 (wa) of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court under Section 482 of the Code, read with the power of superintendence under Article 227 of the Constitution of

India. The challenge is directed against an order dated May 7, 2018, passed by the Learned Additional Chief Judicial Magistrate at Sealdah in connection with Cossipore P.S. Case No. 257 of 2017.

- 2.** By way of the impugned order, the Learned Magistrate was pleased to enlarge the Opposite Party No. 2, one Suwendu Saha, on interim bail. The petitioner assails this order as being "cryptic, unreasoned, and legally non-compliant," contending that such a perverse exercise of judicial discretion not only undermines the integrity of the trial but poses a palpable threat to the safety of the victim.
- 3.** The narrative preceding this litigation is one of significant distress. The petitioner, a lawful tenant of premises situated at 34C, Gopal Chandra Chatterjee Road, entered into a tripartite development agreement in the year 2011 with the Opposite Party No. 2, the proprietor of M/s Sree Krishna Construction. Under the terms of the said agreement, supplemented by a written undertaking dated November 26, 2014, the developer was obligated to shift the petitioner to a temporary accommodation, bear the monthly rental charges, and eventually reinstate her in a self-contained flat of 200 sq. ft. within a period of twenty-four months.
- 4.** It is the petitioner's grievance that once the Opposite Party No. 2 obtained possession of her tenanted residence for the purpose

of redevelopment, he unilaterally ceased the payment of displacement allowances and failed to deliver the promised flat. This prompted the filing of a criminal complaint, leading to the registration of Cossipore P.S. Case No. 257 of 2017 under Sections 409, 420, and 506(ii) of the Indian Penal Code.

- 5.** A crucial facet of this case is that the accused was arrested on May 3, 2018, only after the coercive intervention of this Court in its writ jurisdiction. While the Learned Magistrate initially rejected the bail prayer on the date of arrest—citing the gravity of the offences—he effected a total judicial U-turn a mere four days later on May 7, 2018, granting the interim liberty now under challenge.
- 6.** The resolution of the instant revision hinges upon the following pivotal questions of law and fact:
 - i. whether an order of interim bail is sustainable in law if it fails to comply with the mandatory procedural safeguards enshrined in Rule 183 of the Criminal Rules and Orders (Cr.R.O.) regarding authentication?
 - ii. whether the Learned Magistrate's refusal to record specific reasons for "turning down" the victim's objections, despite the mandate of Section 2(wa) of the Code, constitutes an abdication of judicial duty?
 - iii. whether this Court, in exercise of its supervisory jurisdiction under Article 227, is empowered to strike

down an order passed in manifest violation of binding administrative directions and judicial precedents of the High Court?

7. Mr. Anupam Kr. Bhattacharya, Learned Counsel for the petitioner opened his challenge by mounting a scathing attack on the legal validity of the impugned order, characterizing it as *non-est* in the eye of the law. He submitted that the order is a product of procedural malfeasance, lacking the mandatory declaration that it was 'written/typed by the Magistrate or under his direction.' It is his grievance that the Learned Magistrate merely initialled the order sheet instead of affixing a full signature, thereby violating the sacred mandate of Rule 183 of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985.
8. Reinforcing his argument on procedural invalidity of the impugned order, Learned Counsel relied upon the mandatory directives in *Sharmistha Chowdhuri vs. State of West Bengal (2017 SCC OnLine Cal 9902)*. He placed specific reliance on the following:

"35. I have noted with grave concern the practice of recording orders with the assistance of police personnel attached to the General Registrar section or otherwise is not only illegal but affects the independence of judiciary and the constitutional mandate of separation of judiciary from the executive. Rule 183 of Calcutta High Court

Criminal (Subordinate Courts) Rules, 1985 lays down the procedure for recording judicial orders which reads as follows: —

"R. 183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk."

"36. Accordingly, I deem it necessary to pass the following directions in exercise my powers of superintendence for future guidance of the criminal courts: —

Judges/Magistrates shall record orders strictly in terms of Rule 183 of the Criminal Rules and Orders (Sub-ordinate Court Rules), 1985.

Alternatively, in view of the technological advancement and the availability of personal computers/laptops to the judicial personnel, they may also transcribe their orders on the computers and take a printout thereof and upon affixation of their signature thereto, the said hardcopy shall be treated as a valid transcription of the order passed by the said court.

Under no circumstances, any judicial officer shall take assistance of any external agency particularly police officers in the matter of recording and/or transcribing orders of the Court.

Any breach of such duty shall invite departmental proceeding so far as the judicial personnel is concerned."

"37. Registrar General of this Court shall circulate these directions to all Judges/Magistrates for necessary compliance. Director, State Judicial Academy shall ensure that necessary training is imparted to judicial officers attending the academy so that judicial orders are duly recorded in the manner as indicated above."

9. Mr. Bhattacharya further drew attention to *Mainak Das v. State of West Bengal &Anr.* (2022 SCC OnLine Cal 2243), where the Court observed at Paragraph 11 and 12:

"11. In Sharmishtha Chowdhury v. State of West Bengal reported in 2018 Cri LJ 359 a Coordinate Bench of this Court quote rule 183 of Calcutta High Court Criminal (Subordinate Court) Rules 1985 which reads as follows:

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"R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk." Rule 183 of the Calcutta High Court Criminal (Subordinate Court) Rules, 1985 is applicable to the Executive Magistrate when he acts under Section 144 of Cr.P.C."

"12. In Paragraph 36 of Sharmishtha Chowdhury (supra) this Court has passed the following guideline which is applicable to the Executive Magistrate: — [The guidelines of Para 36 (a) to (d) as quoted above were reiterated here]."

- 10.** Finally, to establish the jurisdiction of this Court, Mr. Bhattacharya relied upon Paragraph 22 of *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Anr.*, (1998) 5 SCC 749:

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code... Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers..."

- 11.** Eventually, Learned Counsel characterized the bail granted as 'perverse' and 'cryptic.' He highlighted that the Petitioner, an elderly widow and a victim, had filed a specific application under Section 2(wa) of the Cr.P.C. detailing imminent life threats. By summarily turning down these objections without a reasoned discussion, the Magistrate, it is argued, abdicated his statutory duty toward the victim.

- 12.** Conversely, Mr. Prabir Kr. Mitra, Learned Senior Counsel for the Opposite Party No. 2 (the developer) raised a preliminary objection regarding the maintainability of this revision. He submitted that since the interim bail was subsequently confirmed, the Petitioner's only recourse was an application for "cancellation of bail" under Section 439(2) of the Code, rather than a prayer for quashing the parent order under Section 482 or Article 227.
- 13.** On the procedural point, he dismissed the lack of a full signature as a "clerical format" issue. He argued that the Magistrate's initial is a globally recognized mark of authentication and that the "merits of liberty" must always outweigh the "technicalities of format." He contended that Rule 183 is directory, not mandatory, and a mere irregularity in signing should not result in the incarceration of the accused.
- 14.** Mr. Mitra further maintained that, save for Section 420 IPC, the offences alleged were bailable in nature. He argued that the underlying dispute was "purely civil" and contractual, arising from a development agreement. Relying on the principle that "bail is the rule and jail is the exception," he submitted that as the Investigating Officer did not seek further custodial interrogation, the Magistrate exercised his discretion correctly. He concluded by suggesting that the allegations of intimidation were "manufactured grievances" designed to exert pressure on

the developer and should not be a ground for setting aside the liberty already granted.

15. I have carefully considered the rival submissions of the parties and perused the materials on record, including the Case Diary and the impugned order sheet. As I have noted during the narration of the petitioner's grievances, the sanctity of a judicial order rests not just on the wisdom of its content, but on the rigor of its form. When a subordinate court ignores the mandatory procedural safeguards established by this Court to ensure the authenticity of judicial records, the resulting order is not merely irregular, it is legally infirm. This case presents a disturbing instance where the liberty of an accused was prioritized over the safety of a victim through an order that fails the most basic tests of procedural authentication.

16. The record reveals that the impugned order lists five grounds for bail, including "period of detention" (a mere 4 days) and "no mention of threat in today's remand report." Such reasoning is a superficial assessment of the gravity of the matter. It ignores the reality that in cases of white-collar crime and criminal breach of trust, the protection of the victim and the integrity of the evidence are paramount.

17. Adverting to the mandate of Rule 183 of the Criminal Rules and Orders (Cr.R.O.), I must reiterate that a judicial order is a public document; consequently, the signature of the Presiding

Officer must be legible and full. The rationale provided in *Sharmistha Chowdhuri (supra)*, which I have already reproduced in the submissions of the Petitioner, is not a mere suggestion; it is a binding mandate. A "mere initial" on a bail order in a case involving substantial fraud under Sections 409/420 IPC and criminal intimidation under Section 506(ii) IPC undermines the solemnity of judicial proceedings. The absence of the mandatory declaration that the order was "written or typed by the Magistrate or under his direction" further renders the order procedurally hollow and susceptible to the charge of being transcribed by external agencies.

18. Regarding the question of law, the contention raised by the Opposite Party No. 2 that "subsequent confirmation cures the initial defect" is legally untenable. It is a fundamental principle of jurisprudence that if an order is born in violation of the principles of natural justice and mandatory procedural rules, it is void *ab initio*. Furthermore, the record reveals that the Learned Magistrate failed to address the petitioner's specific complaints of threats made on May 4, 2018—prior to the grant of bail—and the subsequent death threats reported on May 21 and 22, 2018.

19. Most disturbingly, the Learned Magistrate effectively ignored the petitioner's application under Section 2(w)(a) of the Code. As settled by the Hon'ble Apex Court in *Jagjeet Singh v. Ashish*

Mishra [(2022) 9 SCC 321], the denial of a victim's right to be heard at the stage of bail adjudication vitiates the entire process. The confirmation of such a "vitiating" order cannot breathe life into a dead letter; in judicial terms, such a confirmation is nothing but the "fruit of a poisonous tree."

- 20.** In any event, the power of superintendence under Article 227 of the Constitution is intended to keep subordinate Courts within the bounds of their authority. While Section 439(2) Cr.P.C. provides a remedy for cancellation on merits, Article 227 allows this Court to strike down an order that constitutes a "colorable exercise of power" or represents a manifest failure to adhere to the administrative and judicial directions of the High Court.
- 21.** Upon a holistic consideration of the facts and the settled position of law, I am of the firm opinion that the impugned order of bail suffers from a dual infirmity—procedural and substantive. Procedurally, the total disregard for the authentication protocols under Rule 183 of the Cr.R.O. and the binding directives of this Court in *Sharmistha Chowdhuri (supra)* renders the record a mere scrap of paper lacking judicial solemnity. Substantively, the failure to recognize the statutory rights of the "victim" under Section 2(w)(a) of the Code and the summary dismissal of documented life-threats constitutes a manifest failure of justice.

22. Therefore, this Court arrives at the legal conclusion that the liberty of an accused, while precious, cannot be protected by an order that is "born in sin," i.e., an order passed in defiance of the High Court's administrative and judicial discipline. A bail order which is (a) unsigned or partially initialled in violation of Rule 183 Cr.R.O., (b) unreasoned regarding the specific objections of a victim, and (c) indifferent to the history of witness intimidation, is a perverse order that the High Court is duty-bound to strike down under Section 482 and under Article 227 of the Constitution to prevent a miscarriage of justice.

23. This Court finds that the Learned Magistrate exercised his discretion arbitrarily and in defiance of binding precedents. The subsequent confirmation of bail cannot validate an order that failed to consider the life-threat to the elderly widow/petitioner. Consequentially, it is ordered that:

- a. the order dated May 7, 2018, and all subsequent orders confirming the bail of Opposite Party No. 2, Suvendu Saha, are hereby set aside and quashed. The liberty granted to the accused stands revoked with immediate effect.
- b. the Opposite Party No. 2 is directed to surrender before the Learned Additional Chief Judicial Magistrate, Sealdah, within 48 hours from the communication of this order. Failure to do so shall

result in immediate arrest of the petitioner / accused by the Officer-in-Charge, Cossipore P.S. and produce him before the Court below in custody.

- c. Upon surrender/arrest, the Learned Additional Chief Judicial Magistrate shall hear the bail prayer *de novo*, providing a mandatory and meaningful hearing to the Victim or her authorized counsel, perusing the updated Case Diary and specifically record findings on the allegations of post-arrest threats and intimidation, and recording the order in strict compliance with Rule 183 Cr.R.O. and the format mandated in *Sharmistha Chowdhuri*.
- d. The failure of the Learned Additional Chief Judicial Magistrate to comply with the mandatory requirements of Rule 183 of the Cr.R.O. and the administrative circulars issued by this Court, is a matter of grave concern. Judicial discipline requires that District courts strictly adhere to the formats and protocols established by the High Court to ensure the transparency and integrity of judicial records.
- e. the Registrar (Judicial Service) is directed to call for an explanation from the concerned Judicial Officer as to why the mandatory provisions of Rule 183 and the administrative circulars of this Court were bypassed.

A copy of this order shall be placed in the Annual Confidential Report (ACR) dossier of the said officer, and a formal warning shall be issued to ensure future circumspection.

- f. To prevent such "jurisdictional insubordination" from becoming a norm, the Registrar General is directed to re-circulate the mandatory directions contained in Paragraphs 35, 36, and 37 of *Sharmistha Chowdhuri* to all judicial officers in the State of West Bengal and the Union Territory of Andaman and Nicobar Islands.
- g. All District Judges are directed to ensure compliance through periodic inspections of order-sheets. Any persistent default by any judicial officer in signing order sheets in full or taking external assistance for recording orders shall be reported to the High Court on the administrative side for the initiation of appropriate departmental proceedings.
- h. The Director of the West Bengal State Judicial Academy is directed to include a specific module on the "Recording of Judicial Orders and Authentication of Records" in the induction and refresher courses for judicial officers, emphasizing the legal consequences of non-compliance with the Criminal Rules and Orders.

- i. The Commissioner of Police, Kolkata, is directed to ensure adequate and continuous protection for the Petitioner and her family. The interim protection already granted shall remain in force until the final disposal of the *de novo* bail prayer by the Court below.

- 24.** The Criminal Revision 1248 of 2018 is, accordingly, allowed.
- 25.** There shall be no order as to the cost.
- 26.** All consequential interim order/orders, if any, shall stand vacated.
- 27.** Let a copy of this judgment be sent to the Learned Court below and the concerned Police Station for immediate compliance.
- 28.** The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
- 29.** Case diary, if any, be returned forthwith.
- 30.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)