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CRR 1064 of 2020
With
I.A. No.CRAN 01 of 2020
(Old No.CRAN 2934 of 2020)

Pratima Samanta
Vs.
State of West Bengal

Mr. Deepak Prahladka
...for the petitioner

Ms. Zareen N. Khan
Ms. Manisha Sharma
..for the State

This is an application under Section 397 read with Section 482 of the Code of Criminal Procedure praying for modification of the order dated 16th June, 2020 passed by the learned Additional Sessions Judge, Bench -II, City Sessions Court at Calcutta in Special POCSO Case No.13 of 2014. It is submitted by the petitioner that she was released on bail on 29th June, 2019 in connection with the above noted case by the trial Judge with the condition to file bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties in equal half, one of whom must be a

local surety with condition to appear before this Court on every date fixed without fail subject to the learned Chief Metropolitan Magistrate, Calcutta. It is contended by the petitioner that though bail was granted, the petitioner could not be released on bail on her failure to furnish bail bond with local surety. Therefore, the petitioner has prayed for modification of the impugned order dated 16th June, 2020 where the same prayer was made before the trial Judge but was rejected.

Learned advocate for the petitioner draws my attention to the decision of the Hon'ble Supreme Court in **Motiram and others versus State of Madhya Pradesh** reported in **AIR 1978 SC, 1594**. In the said report it is observed by the Hon'ble Supreme Court that bail is the general rule and the conditions of bail cannot be used as a weapon to detain an accused in custody during trial. The same view was reiterated by Uttarakhand High Court in writ petition (Criminal No.778 of 2020) on 10th September, 2020.

The learned counsel for the State, on the other hand, submits that the petitioner has no permanent residence and if she is released on bail, it would be difficult for the trial Court to bring her to the jurisdiction during trial. Moreover, trial

is on the verge of completion. At this stage condition may not be modified.

Having heard the learned advocates for the parties and bearing in mind the essential jurisprudence with regard to bail this Court is of the view that conditions of bail should not be imposed as a coercive measure to detain the accused in custody. On one hand it is shown that bail is granted. On the other hand for non-performance of such conditions of bail the accused remains in custody. Such coercive measure is violative of the basic principle under Article 21 of the Constitution.

Therefore, I am inclined to modify the condition of bail of the petitioner.

The petitioner may find bail of Rs.5,000/- (Rupees Five Thousand only) each, one surety of like amount to the satisfaction of the learned Chief Metropolitan Magistrate, Calcutta on further condition that she must appear before the trial Court on all dates of trial.

If the petitioner fails to comply with any of the conditions made hereinabove, the order of bail shall be cancelled without further reference to this Bench.

The instant revision and CRAN application being CRAN 2934 of 2020 are disposed of.

The trial Court is directed to act upon the server copy of this order.

(Bibek Chaudhuri, J.)