

24.01.2020
RP/ct 1
sl no. 47
Dismissed

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

C.R.M. 842 of 2019

In Re : An application for cancellation of bail under section 439(2) of the Code of Criminal Procedure filed on 30.08.2019 in connection with Kotwali P.S. Case No.383 of 2019 dated 29.06.2019 under sections 498A/325/326/307/34 of Indian Penal Code

And

In Re : Sri Kanta Prasad Agrahari applicant

Mr. Sourav Ganguly

..... for applicant

Mr. Aditi Shankar Chakraborty

Mr. Nilay Chakraborty

.....for State

Mr. Nabankur Paul

.....for opposite party no.2

Mr. Ganguly, learned advocate appears on behalf of applicant who is de facto complainant. He submits, bail granted by order dated 23rd July, 2019 to the accused/husband should be cancelled. He relies on order dated 21st March, 2013 made in CRM 3551 of 2013 (In the matter of Md. Raju) made by a Division Bench of this Court wherein following was said.

“In the instant case, the grounds on which the learned District Sessions Judge has allowed the application of the co-accused/opposite parties for bail are totally absurd, misconceived and perverse. The order is devoid of reasons and unsupported by any cogent materials and/or evidence in favour of the accused/opposite parties. The said order dated 5th March, 2013 is unsustainable both in law as well as facts.”

The order of bail is perverse because victim's statement made under section 164 of Code of Criminal Procedure, 1973 was obtained

afterward. Applicant's daughter was rescued from being burnt by accused/husband. There should be cancellation. Mr. Paul, learned advocate appears on behalf of accused/husband. He submits, all conditions of bail have been complied with by his client. Order was made on considering materials available in the case diary. That includes injury report and statements made by brother under section 161 of the Code. Mr. Chakraborty, learned advocate appears on behalf of State and hands up the case diary. He confirms, all conditions of bail have been complied with by the accused/husband. Charge sheet has been filed.

We have perused the case diary and statements made under section 161 of the Code by the brother and a neighbor. We have also perused medical report that was available at the time order granting bail was made. Subsequently, statement was made under section 164 of the Code by the victim. We have also perused the statement of the victim.

There are allegations of physical assault. There is further allegation of victim having been doused in kerosene. Charge sheet has been filed. We will only say that the statement made under section 164 of the Code does not add any new material, for purpose of adjudication of this application, regarding the accusations made. As such, we do not find that the order granting bail is perverse.

The application is dismissed.

(Arindam Sinha, J.)

(Biswajit Basu, J)