

C.R.M. (DB) 897 of 2022

06.04.2022
Sl. 33
Court No.29
sourav
(Rejected)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Goghat** Police Station Case No. **166** of **2019** dated **28.06.2019** under Section **376** of the Indian Penal Code read with Sections **4** and **6** of the POCSO Act.

And

In the matter of: **Tapan Mudi**

....petitioner.

Mr. Niladri Sekhar Ghosh
Ms. Soupurna Chatterjee
Mr. Sourav Mondal

...for the petitioner.

Mr. Binay Panda
Ms. Puspita Saha

...for the State.

Petitioner prays for bail.

Learned advocate appearing for the petitioner submits that the petitioner was initially enlarged on bail by the jurisdictional court. On the failure of the petitioner to attend Court on the date of hearing, bail was cancelled and the petitioner was taken into custody. He relies upon (2007) 12 Supreme Court Cases 1 (*Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*) and submits that the Court ought not to have cancelled the bail and taken the petitioner in custody. Summons ought to have been issued. The Court not employing the procedure as laid down in *Inder Mohan Goswami and Another (Supra)*, the Court erred in taking the petitioner into custody. He refers to the statement of the victim recorded under Section 164 of the Criminal Procedure Code as also to the statement of his wife recorded under Section 164 of the Criminal Procedure Code. He submits that both of such persons exonerate the petitioner from the offence.

Learned advocate appearing for the State draws the attention of the Court to the statement of the neighbour recorded under Section 164 of the Criminal Procedure Code.

In the facts of the present case, a complaint was lodged at the instance of the mother-in-law of the petitioner. Allegations are serious as against the petitioner. There are statements recorded under Section 164 of the Criminal Procedure Code of the victim, the wife of the petitioner as well as a neighbour of the petitioner. The wife of the petitioner and the victim who is the daughter of the petitioner, in their respective statements under Section 164 exonerates the petitioner. However, the neighbour implicates the petitioner in the offence.

The petitioner was enlarged on bail by the jurisdictional court. One of the conditions of the order granting bail was that the petitioner should attend Court on each date of hearing. The petitioner admittedly failed to attend Court on one date of hearing when the bail was cancelled and the petitioner was taken into custody.

There is no material placed on record in this petition to explain why the petitioner was absent on that particular date. The petitioner is combative so far as his non-attendance before the trial Court is concerned. The petitioner seeks to take shelter under *Inder Mohan Goswami and Another (Supra)* to contend that the petitioner ought not to have been taken into custody when he failed to attend Court on the date of hearing.

Inder Mohan Goswami and Another (Supra) was rendered in a proceeding under Section 482 of the Criminal Procedure Code. The petitioner is yet to challenge the order canceling the bail. What the petitioner is seeking is an order of bail in this proceeding.

As noted above, there is no material to explain the absence of the petitioner on the fateful day before the trial court.

The apprehension that the petitioner will again not comply with the bail continues to remain given the conduct of the petitioner in not seeking to explain his absence on the fateful day.

In such circumstances, we are unable to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected.

C.R.M. (DB) 897 of 2022 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

