

C.R.A. (SB) 83 of 2022

In Re: An appeal under Section 14A(2) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 for cancellation of bail arising out of Tapan Police Station Case No. 487/2021 dated 13.12.2021 under Section 506 of Indian Penal Code and Section 3 (I) (X) of the SC & ST (Prevention of Atrocities) Act, 1989. Special Case No.12 of 2021.

**Aswini Mahara
-Versus-
The State of West Bengal & Anr.**

Mr. Apalak Basu, Adv.,
Mr. Mukunda Lal Sarkar, Adv.

...for the appellant.

Mr. Abhra Mukherjee, Adv.,
Mr. Dipankar Mahata, Adv.

...for the State.

Mr. Sanat Kr. Das, Adv.,
Mr. Anirban Guhathakurta, Adv.,
Mr. Sujan Chatterjee, Adv.

...for the respondent no.2.

Affidavit-in-opposition and affidavit-in-reply so filed be kept with the records.

The subject-matter of challenge relates to the order dated March 22, 2022, passed by the learned Additional District and Sessions Judge, 1st Court, Dakshin Dinajpur at Balurghat wherein in Special Case No.12/21 the learned Special Court was pleased to grant bail to the present respondent no.2 on his surrender before the Court. The only issue which appealed to the learned Special Court were that the charge-sheet has been submitted in the case and investigation is concluding, the residence of the respondent no.2 being within the jurisdiction of the Court and the nature and gravity of the offence. Learned

Special Court did not take into account the provisions of sub-section (3) and sub-section (5) of Section 15A of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 hereinafter referred to as the 'Special Act') wherein it has been categorically held that any Court proceedings including the bail proceedings should afford the appellant/complainant/victim an opportunity to be heard before any order is passed.

Mr. Apalak Basu, learned Advocate appearing for the appellant submits that the provisions of Section 15A of the Special Act was called for interpretation by the Hon'ble Supreme Court in the case of ***Hariram Bhambhi – Vs. – Satyanarayan and Another***, reported in ***2021 SCC Online SC 1010*** wherein the Hon'ble Supreme Court was pleased to hold that the non-issuance of notice to the victim is not a curable irregularity and calls for interference of the superior Court.

Mr. Sujan Chatterjee, learned Advocate appears on behalf of the private respondents and submits that the present case is a counter-case. The conduct of the appellant will be in the statements of the guardians of the school for which a resolution was passed.

Mr. Abhra Mukherjee, learned Advocate appears on behalf of the State and produces the case diary. Learned Advocate submits that the provisions of the Special Act is attracted in the present case and there cannot be any ignorance to the provisions of law as is enumerated in the Act.

I have considered the submissions advanced by the appellant, the State respondent and the private respondent and

on an appreciation of the same and on perusal of the order dated March 22, 2022, I am of the opinion that the learned Special Court considered the application in the manner of Section 437 or Section 439 of the Code of Criminal Procedure, 1973 without adhering to the provisions of the Special Act.

Consequently, this Court has got no option left but to direct the learned Special Court to re-hear the application for bail after affording opportunity to the victim as provided under Section 15A of the Special Act and as has been interpreted by the Hon'ble Supreme Court in **Hariram's** case (**supra**). However, for the ends of justice, I am of the opinion that the respondents should be granted an opportunity before their bail is cancelled and taken into custody. Thus, the order of bail dated March 22, 2022 is modified and limited up to September 30, 2022. In the meantime, the appellant and the private respondent including the learned Public Prosecutor appearing before the learned Special Court along with the case diary would appear on September 27, 2022 when the learned trial Court would afford opportunity to hear all the parties and decide its course of action.

With the aforesaid observations, the criminal appeal being C.R.A. (SB) 83 of 2022 is disposed of. Pending application, if any, is consequently disposed of.

Mr. Abhra Mukherjee, learned Advocate appearing for the State is directed to communicate this order through the Deputy Superintendant of Police, DEB, so that by September 23, 2022,

the learned Public Prosecutor conducting the case would be in a position to assist the Special Court.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)