

16-12-2022
Subha
Item no.19
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction

CRA(SB) 156 of 2022

Malabya Patra & Anr.
-versus-
Krishnendu Saha & Ors.

Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett

.....for the petitioner.

Mr. Abhijit Bhuiya
Mr. Md. Bani Israil

....for the respondent nos. 1 & 2.

Ms. Sreyashee Biswas

....for the State.

Affidavit of service so filed be kept with the record.

The subject matter of the appeal is in respect of an order of bail passed by the learned Additional Sessions Judge, 1st Court, Howrah wherein the special court on surrender of two of the accused namely, Upama Patra(Saha) and Krisnendu Saha was pleased to release them on bail.

The reasons so assigned by the learned court was that as the chargesheet was submitted and the investigation is over, the detention of the accused/petitioners are not necessary for further investigation.

I do not intend to enter into the merits of the application for releasing the two accused persons on bail in the order dated 27th January, 2020 but the said case being under the provisions of the Scheduled Casts and the Scheduled Tribes(Prevention of Atrocities) Act, 2016, I am of the opinion that the provisions of sub-section (5) of

Section 15A of the said act which states as follows:—

sub-sec.(5) of S.15A : A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

The de facto complainant has a right to be heard at the time of the hearing of the bail application.

The said view was approved by the Hon'ble Apex Court in the case of **Hariram Bhambhi -vs- Satyanarayan & Anr.**, reported in **2021 SCC Online SC 1010** and this court also passed similar directions in CRA (SB) 83 of 2022 (Aswini Mahara -vs- The State of West Bengal & Anr.). Considering the fact that the respondents were granted bail almost two years ago, I do not intend to curtail their liberty without an exhaustive hearing being done on merits before the learned special court.

Accordingly, the earlier order of bail is modified till 31st January, 2023.

All the parties are directed to be present before the learned special court on 10th January, 2023. The learned special court would hear out the de facto complainant, the accused and the State and thereafter pass a fresh order by 31st January, 2023.

With the aforesaid observations, the present appeal being CRA (SB)156 of 2022 is disposed of.

Needless to state that this court has not gone into the merits of the bail as to whether the petitioner should be granted bail or not, but only considered the issue of legality/illegality in the background of the

de facto complainant not being heard at the time of consideration of the bail application.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]