

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.A. (SB) 66 of 2023

Suparna Dey

Vs.

State of West Bengal & Anr.

For the Appellant :Mr. Tanmoy Chattopadhyay, Adv.
Mr. Manas Das, Adv.
Mr. Debapriya Majumdar, Adv.

For the State :Mr. Ranabir Roy Chowdhury, Adv.
Mr. Sandip Chakrabarty, Adv.
Mr. Saryati Datta, Adv.

For the opposite party no. 2 :Mr. Abhimanyu Banerjee, Adv.

Heard on : 28.06.2023, 26.07.2023,
25.09.2023,

Judgment on :04th October, 2023

Bibhas Ranjan De, J.

1. The appeal under Section 14A (2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act, 1989) (for short Act, 1989) read with Section 439(2)/482 of the Code of Criminal Procedure, 1973 (for short CrPC) is filed assailing the order dated 16.02.2023 whereby Ld. Additional Sessions Judge, 1st Court, Paschim Medinipur granted bail in favour of respondent no. 2 /Wrishita Dey @ Ishita Dey in connection with Special Trial (S.T) no. 79 of 2021 under Section 341/323/506/34 of the Indian Penal Code read with Section 3(1) (x) of the Act, 1989.
2. The appeal has been preferred on the ground of granting bail in absence of defacto complainant in violation of Section 15A (5) of the Act, 1989.
3. Ld. Advocate, Mr. Tanmoy Chattopadhyay, appearing on behalf of the appellant has referred to the certified copy of the previous orders passed by the Ld. Judge, prior to granting bail on 16.02.2023. Mr. Chattopadhyay further contended that on 16.02.2023 neither defacto complainant nor his Ld. Advocate appeared at the time of hearing bail application. Mr. Chattopadhyay submitted that Ld. Judge, granted anticipatory

bail by referring to the words ‘in the event of arrest’ in the last portion of the order impugned.

4. Per Contra, Ld. Advocate, Mr. Abhimanyu Banerjee, appearing on behalf of the respondent no. 2 contended that Ld. Judge, duly complied with the Provision of Section 15A(5) of the Act, 1989 and in support of his contention he refers to certified copy of the earlier orders prior to considering bail application on 16.02.2023 by the Ld. Judge. Mr. Banerjee has submitted that the order impugned *ipso facto* is not anticipatory bail.
5. Ld. Advocate, Mr. Ranabir Roy Chowdhury on behalf of the State/respondent supported the argument advanced on behalf of the respondent no. 2 and left the matter to the discretion of this Court.
6. Before I delve into the contentious issue I find it appropriate to recapitulate the provision of section 15A (5) of the Act, 1989 as quoted below:-

“ (5) 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.”

- 7.** From the certified copies of all orders recorded by the Ld. Judge, till 16.02.2023, I find that on 21.12.2022, defacto complainant entered appearance and claimed travelling allowance, daily allowance and maintenance expenses under the Act, 1989 and that was allowed and District Magistrate, Paschim Medinipur was requested to provide the allowances.
- 8.** On 01.02.2023 defacto complainant filed one put up petition for placing documents relating to transfer of the case to the Court of Additional Sessions Judge, 1st Court, Howrah with a prayer for staying of all further proceedings of the case. On that date bail petition was filed by the respondent no. 2, which was fixed on 04.02.2003 and with a direction to serve notice upon the defacto complainant.
- 9.** On 04.02.2023 Ld. Advocate, on behalf of the defacto complainant remained present by filing hazira and raised issue of service of notice upon the de facto complainant by the Ld. Special PP who was then directed by the Ld. Judge to serve notice upon the defacto complainant. Next date was fixed on 09.02.2023.
- 10.** On 09.02.2023 Ld. Judge recorded an order as quoted below:-

“ Defacto complainant should have been present with her Advocate as per the notice served upon her. Bail application of Ishita Dey is pending disposal. Other two accused persons are on bail.”

- 11.** Ld. Special P.P. was once again directed to summon defacto complainant on 16.02.2023.
- 12.** Finally on 16.02.2023 defacto complainant remained absent and Ld. Judge recorded the order that Ld. Advocate on behalf of the defacto complainant was present on 04.02.2023 but neither the defacto complainant nor the Ld. Advocate on her behalf was present despite issuance of notice by the Court as well as Ld. Special P.P.
- 13.** Section 15A (5) of the Act, 1989 was codified with a view to providing a right of hearing to the defacto complainant of all the proceedings including bail application. Provision of Section 15A (3) of the Act, 1989 casts a duty upon the Special Public Prosecutor or the State Government to inform victim about any proceeding under this Act.
- 14.** Therefore, opportunity of hearing in the proceedings as well as right to be informed cannot be construed, in my

opinion, as a right of information in all the adjourned dates of hearing of a **particular bail application**.

15. In our case, defacto complainant engaged an advocate on her behalf who remained present on 04.02.2023 when bail application of respondent no. 2 was fixed on 09.02.2023 for hearing. Not only that on 21.12.2022 respondent no. 2 filed a petition for bail which was fixed on 04.02.2023 with a direction for issuance of notice upon the defacto complainant. On 21.12.2022 later order passed by the Ld. Judge, shows that defacto complainant was present with a petition for granting allowances under the Act, 1989.

16. Therefore, it cannot be said that the defacto complainant and her Ld. Advocate had no notice of hearing of bail application.

17. With regard to second limb of argument advanced by Mr. Tanmoy Chattopadhyay, I find that the order impugned was an order of granting bail to the respondent no. 2, not an anticipatory bail.

18. Thus, the Criminal Appeal being no. CRA(SB) 66 of 2023 Stands dismissed.

19. Case diary be returned.

- 20.** All parties to this application shall act on the server copy of this order downloaded from the official website of this Court.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]