

04.10.2023.
49.
Ct.No.28.
as

C.R.M. (DB) 2819 of 2023

In Re: An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure.

In the matter of : Dev Sarker.

... Petitioner.

Mr. Ayan Bhattacharyya,
Mr. Meghajit Mukherjee,
Ms. Mobina Ali.

...for the Petitioner.

1. Learned Counsel for the petitioner contends his client is the defacto complainant and victim in the case. He was denied an opportunity of hearing when anticipatory bail order was passed. Secondly, the order was passed without taking into consideration relevant factors that is prevaricating stance of the petitioner in collateral proceedings. Hence, the said order be set aside.

2. Anticipatory bail has been granted by a Co-ordinate Bench of this Court. In **Abdul Basit alias Raju and Ors. Vs. Mohd. Abdul Kadir Chaudhary and Anr.**¹ the Apex Court held bail granted by High Court cannot be reviewed by itself on the ground it is illegal or perverse. The Court may entertain a prayer for cancellation on subsequent conduct only. Petitioner urges this Court to do exactly what is forbidden in **Abdul Basit** (supra). He contends the bail granted by the Co-ordinate Bench without

¹ (2014) 10 SCC 754

considering relevant materials including prevaricating stance of the opposite party nos. 1 and 2.

3. To do so this Court would be called upon to sit a judgment and review the bail order passed by a Co-ordinate Bench which is impermissible in law. Remedy of the petitioner lay in assailing the order before the Hon'ble Apex Court which he has chosen not to do. The present application for cancellation before the same forum cannot be a surrogate for such relief.

4. The other issue raised is that petitioner who is a victim was not heard at the time of granting of anticipatory bail. This argument is wholly misconceived. Apart from certain Special Laws² or offences including rape/gang rape of minors³, law does not enjoin notice/presence of the victim prior to disposal of a bail/anticipatory bail application.

5. In ***Jagjeet Singh and Ors. Vs. Ashish Mishra @ Monu and Anr.***⁴ the Apex Court recognized the right of a victim to be heard during disposal of a bail application. But in para 24.2 of the said report the Court clarified when the victims themselves had come forward to participate, they must be heard.

6. In light of this observation, we are unable to hold the ratio in ***Jagjeet Singh*** (supra) mandates prior to considering a bail prayer a Court must issue notice on a victim save and except in cases under Special Laws where such procedure is a part of the statutory scheme.

² The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

³ Section 439(1A) CrPC

⁴ (2022) 9 SCC 321

7. Needles to mention prior to disposal of the anticipatory bail application, Public Prosecutor was heard and materials collected during investigation had been considered. Thus, the procedure adopted by the Co-ordinate Bench in disposing of the anticipatory bail application cannot be said to be contrary to law or fair procedure.

8. For these reasons, we hold the application is misconceived and accordingly dismissed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)