

02-03-2023

ct no. 13

sl. 1

sp

WPA 20475 of 2021

Kasmira Bibi

-Versus-

The State of West Bengal & Ors.

Mr. Rwitendra Banerjee

...for the petitioner

Mr. Partha Sarathi Das,

Mr. Hafiz Ali,

Ms. Shanta Sarkar

...for the respondent nos. 4 to 8

It is submitted that out of five, 4 accused persons have been arrested. The 5th one, the father-in-law of the petitioner, Sahadulla Sk is being searched out. Repeated raids have been conducted.

A question that comes for consideration in the matter is as to whether a bail can be cancelled by a Constitutional Court under Article 226 of the Constitution of India. The criminal jurisprudence of this Country prescribes that such an application for cancellation of bail is made either by the prosecution or in some cases, the victim. The common ground for cancellation of bail is that the accused have violated the terms and conditions of bail or have committed further offences thereafter.

It is normally a Court that grants the bail or a higher forum that entertains and is empowered to

cancel a bail already granted in the light of the evidence that is brought before it. The prosecution is invariably consulted.

In the instant case, however, the Writ Court under Article 226 of the Constitution of India is seized of a very peculiar set of facts. The victim has approached the Court after being continuously tortured by her in-laws. As already mentioned in the order dated February 16, 2023, there are at least 10 charge sheets filed against the private respondents/accused persons over a period of 6 years. The charge sheets are under Sections 498A/323/325/506/195A/354/448/427 of the IPC.

Across the bar, the learned counsel for the petitioner, briefed by the Legal Services Committee of the High Court has submitted that the father-in-law of the petitioner has attempted to sell the petitioner and her two minor daughters.

The accused persons are hardened criminals apart from being repeated offenders. The life and liberty and security of a young lady fending for herself and her two minor daughters against society at large is at stake.

In the above circumstances, this Court is of the view that the petitioner, who is a citizen, is

required to be secured by all available means of the Writ Court under Article 226 of the Constitution of India. The fundamental rights of liberty enshrined in part of the Constitution of India would be rendered meaningless, if special measures are not taken under these circumstances to secure the petitioner.

The foremost reason for cancellation of the bail of the accused is to secure the petitioner and her two minor daughters. The petitioner is a destitute lady surviving against all odds, particularly, facing brutality from her family members.

The second reason for adopting this extreme measure by this Court is that the accused/in-laws, apart from being hardened criminal and repeated offenders, have not hesitated to take the law in their hands despite being charged on ten occasions. It would be a travesty of justice to allow the said persons to remain at liberty in the society. The said persons who are suffering proceedings, in ten charge sheets, are clearly a menace to society. The said persons have no respect for the Court for liberty granted to them on ten occasions by various Courts.

The normal procedure for cancellation of bail may take time and the petitioner is not in a position to pursue or ensure the same.

The Court has already expressed anguish that the police have not placed the history of the accused persons in the Court below when the last bail was granted to them.

The Officer-in-Charge, Kandi Police Station, Murshidabad PD shall make efforts to trace out the father-in-law, Sahadulla Sk.

Appropriate communications shall be made to neighbouring States through the higher authorities of the Kandi Police Station. All attempts shall be made to apprehend the accused.

The police picket already ordered shall continue for one more month. The petitioner shall be at liberty to contact Kandi Police Station upon any information or whereabouts of said Sahadulla Sk.

The Kandi Police Station shall render any other assistance that the petitioner may require in accordance with law.

With the aforesaid observations, the instant writ petition shall stand disposed of.

The report of the Kandi Police Station, Murshidabad PD dated 01.03.2023 be kept with the record.

There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)