

28.11.2023
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sdas
rejected

C.R.M.(DB) No. 3541 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Pathar Pratima Police Station Case No. 84 of 2020 dated 07.08.2020 under Sections 498A/324/325/406/506/34 of the Indian Penal Code.

And

In Re : Swapan Giri petitioner

Mr. Gobinda Chandra Baidya

Mr. Gobinda Baidya

....for the petitioner

Mr. Partha Pratim Das

Mrs. Manasi Roy

..... for the State

1. Perused the report of the Public Prosecutor. He stated PW 1, Biswajit Giri, has supported the prosecution case. Hence, he did not declare the witness hostile.

2. We have perused evidence of the said witness. In examination-in-chief, the witness stated that his mother came in contact with fire and died. He was alone with his mother in the house. This is in clear contradiction to his earlier statement before the learned Magistrate wherein he stated that his father had set his mother on fire. Under such circumstances, we fail to appreciate how the Public Prosecutor who is expected to be a senior and responsible law officer can come to a conclusion that the witness had supported the prosecution case and not resiled from his earlier statement. Public Prosecutor is a vital pivot in the administration of criminal justice. Fate of a prosecution case rests in his hands. If the prosecution is entrusted to lawyers

who are so cavalier and indifferent that patent contradictions of vital witnesses are ignored, criminal trial would be rendered a mockery of justice and truth would cry in wilderness.

3. To remedy the situation and put back the prosecution on rails, we direct the legal remembrancer that the prosecution of the case be handed over to a special Public Prosecutor who shall recall the aforesaid witness and cross-examine him as a hostile witness. He shall conduct the trial from the stage it has presently arrived.

4. Explanation offered by the Public Prosecutor-in-charge of the case shows patent lack of application of mind to the facts of the case. It is dangerous that the persons of such indifferent and callous attitude are in the panel of Public Prosecutor. Accordingly, we direct the legal remembrancer to remove the Public Prosecutor-in-charge from the panel of Public Prosecutor.

5. Present case involves bride burning. Petitioner is the husband and the principal accused. We have directed the eye-witness who has resiled from his earlier statement to be recalled and cross-examined. Said witness is the son of the petitioner. In order to ensure that there is no adverse influence on the said witness and other witnesses during trial, we are not inclined to enlarge the petitioner on bail at this stage.

6. Application for bail is, thus, rejected.

7. Trial court shall ensure necessary witness protection measures are extended by the prosecution so that other witnesses do not turn hostile.

8. Department is directed to communicate copy of this order to the trial court and legal remembrancer for necessary action.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)