

21.03.2023
tkm/ct 28
sl no. 74

C.R.M. (DB) 4072 of 2022

In Re : An application under section 439(2) of the Code of Criminal Procedure

And

In Re : Biman Biswas

..... petitioner

Mr. Sekhar Kr. Basu, Sr. Adv.
Mr. Pabitra Biswas

..... for the petitioner

Mr. S Bapuli
Ms. S Santra

..... for the State

Mr. Malay Bhattacharya
Mr. S Ghosh
Mr. S Sengupta

..... for OP no. 2

Mr. Basu, learned Senior Advocate for the petitioner submits that the special court granted bail without giving opportunity of hearing to his client. Order was passed in violation of the law declared by the Hon'ble Apex Court in *Jagjeet Singh vs. Ashish Mishra @ Monu*¹. He also submits that the gravity of the offence was not taken into consideration.

Mr. Bhattacharya for the opposite party no. 2 submits that the trial court looked into relevant materials including the evidence of the minor. His client has duly complied with the conditions of bail.

Learned lawyer for the State produces the case diary.

We have considered the materials on record. Minor victim was below 16 years at the time of occurrence. In view of section 439(1A) of the Code duty was cast on the Sessions Judge to ensure

¹ (2022) 9 SCC 321

the presence of the informant at the time of hearing of the bail application. No notice was given to the de facto complainant or the minor victim with regard to the bail application and no effort was taken to ensure their presence during hearing.

In *Jagjeet Singh* (supra) the Apex Court held the victim has a right to intervene and participate during bail hearing.

Order granting bail behind the back of the petitioner is liable to be set aside in view of the aforesaid legal premise.

Even on merits, we find that the minor victim has supported the prosecution case and her deposition shows that she had been duped by the petitioner to share her nude photos. Thereafter she was blackmailed by the petitioner who is none other than her father's friend. These aspects including gravity of the crime perpetrated on a minor by an elderly family friend were not considered by the Sessions Judge while granting bail. Hence, we are inclined to set aside the order granting bail.

Petitioner shall appear before the court below positively within seven days from date and be committed to custody failing which the trial court shall issue appropriate process for ensuring his apprehension in accordance with law.

Needless to mention observations made by us are for disposal of the application and shall not have any bearing at the subsequent stage of the proceeding including the fate of any future application for bail preferred before the trial court, in the event there is delay in trial.

In the event petitioner surrenders as aforesaid, trial court is directed to ensure prompt examination of the remaining witnesses and conclude the trial preferably within six months from the next date fixed for recording evidence in view of mandate under section 35(2) Cr.P.C.

With the above observations, CRM (DB) 4072 of 2022 is disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)