

07.07.2023
Item no.69
Court No.1.
AB

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CRM (DB) No. 51 of 2023

In Re: An Application under Section 439(2) of the Code of Criminal Procedure

And

**In the matter of : Subendra Nath Barman
@ Sabendra Nath BarmanPetitioner.**

Mr. Subhasish Misra,
Mr. Swarup Dasfor the Petitioner.

Mr. A. S. Chakraborty, Id. APP
Mr. Sourav Gangulyfor the State.

Mr. Hillol Saha Poddar,
Ms. Mousumi Dasfor the Opposite Party No.2, 3.

This is an application under Section 439(2) of the Code of Criminal Procedure, whereby the petitioner has prayed for cancellation of the order of anticipatory bail passed in favour of the opposite party nos.2 and 3 on 31.10.2022 in CRM(A) No.440 of 2022 by a Coordinate Bench of this Court.

Learned Advocate for the petitioner, in course of his submission, draws attention of this Court to the written complaint filed in Mathabhanga P.S. Case No.145 of 2022 dated 28.3.2022 wherein one Kanak Barman was arrayed as principal accused. Attention of this Court is also drawn to Annexure A2 at page 15 of the instant application wherefrom it appears that in course of investigation, it appeared that the main accused is one Dipankar Barman, who happens to be the son of the present opposite party no.2 and brother of opposite party no.3.

It is further contended on behalf of the petitioner that such change in circumstances probably was not placed before the Coordinate Bench on 31.10.22, which is why a favourable order of anticipatory bail was passed.

Learned Advocate for the petitioner thus submits that in view of the changed circumstances and in view of non-placing of proper materials before the aforementioned Coordinate Bench, the order of anticipatory bail passed on 31.10.22 in CRM (A) No.440 of 2022 should be cancelled and/or recalled.

We have heard learned Advocate for the State as well as learned Advocate for the opposite party nos.2 and 3. In course of his submission, learned Advocate for the State candidly admits that in an initial statement as recorded on 20.3.2022 under Section 164 Cr.P.C. the victim has mentioned the FIR named accused no.1 as the principal accused whereas in her 2nd statement recorded under Section 164 Cr.P.C. on 30.3.2022, the victim has mentioned the name of the son of the opposite party no.2 and the brother of the opposite party no.3 as the principal accused wherein there are several allegations against the opposite party nos.2 and 3 also.

In our considered view, before the Coordinate Bench passed the order on 31.10.2022 in CRM (A) 440 of 2022, the said Coordinate Bench must have perused the entire materials placed before the said Bench and nothing could be placed on behalf of the petitioner that the 2nd statement of the victim dated

30.3.2022 recorded under Section 164 Cr.P.C. was suppressed before the said Coordinate Bench.

Such being the position and keeping in mind the principle of judicial propriety, we are not inclined to interfere with the order dated 31.10.2022 passed in CRM (A) 440 of 2022. As a result, the instant application for cancellation of anticipatory bail fails and the same is hereby dismissed.

It is, however, ordered that the present opposite party nos.2 and 3 shall not leave the territorial jurisdiction of the learned Trial Court and shall meet the Investigating Officer in connection with Mathabhanga Police Station Case No. 145 of 22 dated 28.3.2022 or the Investigating Officer of the concerned Police Station, who is at present dealing with the case till submission in Final Form. The present opposite party nos.2 and 3 shall not mete out any threat or inducement either to the victim girl or her family members.

Learned Advocate for the State is hereby requested to communicate this order to the concerned Investigating Officer for his information and record.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)

