

17.11.2023

Serial no. 08

(Dd)

*Calcutta High Court
In The Circuit Bench at Jalpaiguri,
Appellate Side*

CRM (DB) 353 of 2022

In re : An Application for cancellation of Bail under Section 439(2) of the Code of Criminal Procedure, 1973.

-And-

In the matter of : State of West Bengal

... ..Petitioner

Mr. Saikat Chatterjee,
Mr. Biswarup Roy, Advocates
... .. For the Petitioner

Mr. Sudip Guha, Advocate
... ..For the Opposite Party

The application for cancellation of bail granted by the jurisdictional Court is at the behest of the State.

Learned advocate appearing for the State submits that, the private opposite party was granted ad interim bail by the order dated July 26, 2022. The incident occurred on July 25, 2022. The jurisdictional Court did not consider the case diary while granting ad interim bail to the private opposite party on July 26, 2022. Thereafter, from time to time, the ad interim bail was extended. State applied for cancellation of the ad interim bail and applied for adding Section 376(2)(b)/376(3) of the Indian Penal Code, 1860 read with Section 6 of the Protection of Children from Sexual Offences Act. The application for cancellation of bail was rejected by the order dated August 24, 2022 and the ad interim bail granted on July 26, 2022 was continued.

Learned advocate appearing for the State submits that, the learned Court failed to consider the materials on record in

the correct perspective. The learned Court did not consider the statements recorded under Section 164 of the Criminal Procedure Code of the victim girl. The victim is a minor. She in her statement recorded under Section 164 of the Criminal Procedure Code implicated the private opposite party with regard to the offence of sexual assault. The narration of the incident by the victim in her statement recorded under Section 164 of the Criminal Procedure Code stood corroborated by at least two Railway Protection Force personnel who recorded their statements under Section 161 of the Criminal Procedure Code. The victim girl was examined medically and that, the possibility of sexual assault was not ruled out by the Doctor examining her. In such conspectus he contends that, the ad interim bail granted to the private opposite party should be cancelled.

Learned advocate appearing for the private opposite party submits that, the State is not alleging any post bail misconduct. The private opposite party holds a responsible position in the Railways. The allegations as against the private opposite party remain unsubstantiated. He contends that, the ad interim bail granted to the private opposite party should not be cancelled.

The victim girl lodged a complaint with the police on July 25, 2022 as against the private opposite party. The police took up investigations on the basis of the complaint made by the victim girl. Police arrested the private opposite party and produced him before the jurisdictional Court on July 26, 2022.

The trial Court on July 26, 2022 granted ad interim bail to the private opposite party. State applied for cancellation of the ad interim bail granted. The ad interim bail was extended from time to time. State also applied for adding Sections 376(2)(b)/376(3) of the Indian Penal Code, 1860 read with Section 6 of the Protection of Children from Sexual Offences

Act. Ultimately, application for cancellation of bail as also the application for bail were heard and decided by the learned Court on August 24, 2022. The learned Court was pleased to continue with the ad interim bail granted to the private opposite party on July 26, 2022. While confirming the ad interim bail granted to the private opposite party, the learned Judge took into account the statement of the victim recorded under Section 164 of the Criminal Procedure Code as also statements of witnesses recorded under Section 161 thereof in the light of the fact that, there was no allegation of private opposite party tampering any evidence or threatening any witness or misusing liberty of bail or there was any allegation of interference with the due course of justice or tampering the investigation or there was any illegality of the private opposite party fleeing from justice.

Although, the aspects noted by the learned Judge while considering grant of the prayer for bail, are relevant, the learned Judge was also required to consider the gravity of the offence and the involvement of the private opposite party therein as appearing from the materials in the case diary.

As noted above, the incident occurred on July 25, 2022. The private opposite party was arrested and produced before the jurisdictional Court on July 26, 2022. When he was enlarged on ad interim bail on July 26, 2022, the case diary was not made available the learned Court. In any event, it did not contain statements recorded under Section 164 of the Criminal Procedure Code of the victim girl or the Statement recorded under Section 161 of the Criminal Procedure Code of the police personnel. It also did not contain the medical examination report of the victim girl. These are the developments subsequent to July 26, 2022.

The victim girl recorded Statement under Section 164 of the Criminal Procedure Code where she implicates the

private opposite party in an incident of sexual assault. Her narration of the incident stands corroborated by the statement recorded under Section 161 of the Criminal Procedure Code of two police personnel belonging to the Railway Protection Force.

Moreover, the victim girl was medically examined and that the medical examination report of the victim girl speaks of a possibility of sexual assault.

The private opposite party stands implicated in an offence of sexual assault of a minor on the basis of the materials in the case diary as noted above.

The learned Judge while continuing with the ad interim bail did not allude to or consider these vital aspects. In such circumstances, we are of the view that the learned Judge, failed to take into account relevant materials available in the case diary while extending the ad interim bail granted on July 26, 2022.

In such circumstances, we set aside the orders dated July 26, 2022 and August 24, 2022 extending the ad interim bail granted by the learned Judge. We direct the private opposite to surrender before the jurisdictional Court within seven days from date. In default, the jurisdictional Court will proceed in accordance with law.

CRM (DB) 353 of 2022 is **allowed**.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)