

19.02.2024.
66.
Ct.No.28.
as
(Allowed)

C.R.M. (DB) 499 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bhowanipore P.S. (DD) Case No.154 of 2022 dated 07.06.2022 under Sections 302/396/120B/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

In the matter of : **Santosh Kumar Pati @ Rahul.**

.... Petitioner.

Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Trisha Rakshit,
Ms. Sayanti Biswas,
Ms. Rajorshee Tha.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Subrato Roy.

...for the State.

1. Petitioner is an approver in the case. As per the conditions imposed on him for grant of pardon, petitioner has deposed during trial in support of the prosecution. In spite thereof, he stands in a piquant position being deprived of liberty on the ground he is an approver and cannot be released till conclusion of trial.

2. Learned Advocate for the State refers to Section 306 sub section (4) of the Code of Criminal Procedure which imposes an embargo on release.

3. Section 306 of sub section (4) reads as follows:

“306 (4): Every person accepting a tender of pardon made under sub-section (1)-

- a) *shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;*
- b) *shall, unless he is already on bail, be detained in custody until the termination of the trial.*

(Emphasis supplied)

4. As per the aforesaid provision, a person who has been tendered pardon shall be examined as a witness before the Magistrate as well as the trial court and if he is not on bail shall be detained in custody until termination of trial. Interpreting the aforesaid provision, the Apex Court in *Suresh Chandra Bahri Vs. State of Bihar*¹, inter alia, held as under:-

“The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime, whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he granted pardon and released from custody.”

5. The purpose of detention of an accomplice is to protect him from possible indignation, rage and resentment of his associates facing the trial. In the present case all his associates i.e. the offenders are in custody with the petitioner.

6. In such a situation, continued detention of the petitioner in custody with his associates who are facing trial exposes him to a greater risk than being released on bail. A provision in a

¹ 1994 Cri L. J. 3271

statute cannot be read in a mechanical manner which leads to absurd situations. When an approver has already been examined and has supported the prosecution case, it would be contrary to the interest of justice to keep him in protective custody in the correctional home along with other offenders on the specious plea of protecting him from the latter's vengeance. A situation like this requires invocation of inherent powers of this Court to ensure the precious right of liberty of the petitioner who is presently a witness in the case be restored to him.

7. We are further persuaded to hold as aforesaid as no threat perception on the petitioner from external sources has been indicated.

8. Accordingly, we invoke the inherent powers of this Court to enlarge the petitioner on personal bond to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Paraganas subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

9. In the event the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

10. This application for bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)