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07-10-2024
(ct. no.28)
S. De
(Allowed)

CRM (DB) 1495 of 2024

In re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with **Kalyani Police Station Case No. 502 of 2022** dated **04.09.2022** under **Sections 420/406/506** of the Indian Penal Code.

- A n d -

In the matter of : Somnath Biswas.

.... petitioner.

Mr. Phiroze Edulji,
Mr. Shivaji Kumar Das,

... For the petitioner.

Mr. Rana Mukherjee,
Mr. Debanshu Ghorai,

... For the State.

Mr. Sourabh Guhathakurata,
Ms. Nilanjana Sarkar,
Mr. Abhratanu Sarkar,

...for the de facto complainant.

Order dictated by Arijit Banerjee, J.

1. Learned advocate for the petitioner relies on the two decisions of the Hon'ble Apex Court in the case of **P.K. Shaji @ Thammanam Shaji Vs. State of Kerala** reported in **(2005) 13 Supreme Court Cases 283** and in the case of **Gurdev Singh & Anr. Vs. State of Bihar and Anr.** reported in **(2005) 13 Supreme Court Cases 286**. It is quite clear that before the bail granted to an accused person is cancelled, the accused person has a right to be heard. This indubitably follows from the principles of natural justice. Nobody can be condemned unheard. Bail is a privilege granted to an accused person. Before such privilege is withdrawn, the person concerned must be given an opportunity of being heard.

2. Learned advocate for the de facto complainant and the State are of the view that notice need not necessarily be served on the accused person. It is enough if the surety is given a notice.
3. Learned advocate for the de facto complainant relies on a decision of the Rajasthan High Court in the case of **Johnny Wilson Vs. State of Rajasthan (85)** reported in **Rajasthan Law Weekly 1986**.
4. Having considered the decisions cited, we are of the view that an accused person whose bail is sought to be cancelled, must be given notice before cancellation of bail. In the present case, the petitioner did not receive any such notice before his bail was cancelled by the learned Trial Court. This, in our view, vitiates the order cancelling bail.
5. Accordingly, we grant bail to the petitioner.
6. Accordingly, we direct that the petitioner, namely, **Somnath Bisawas** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local to the satisfaction of the learned Additional Chief Judicial Magistrate, Nadia at Kalyani and on further conditions that he shall not enter into the jurisdiction of the district of Nadia except for the purpose of attending Court proceedings and shall also furnish the address where he will be residing to the Officer-in-Charge in whose jurisdiction he will be residing and shall also appear before such Officer-in-Charge once in a fortnight until further orders and on further condition that the petitioner shall not leave the State of West Bengal without leave of the learned Trial Court until further orders.

7. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.
8. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.
9. The application for bail is, accordingly, allowed.
10. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)