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CRA (SB) 81 of 2023

**Sayak Halder
Vs.
The State of West Bengal & Anr.**

Mr. Avik Ghatak,
Mr. Soham Banerjee,
Mr. Parashar Baidya,
... for the appellant.
Mr. Imtiaz Ahmed,
Mrs. Ghazala Firdaus
Mr. S. K. Saidullah,
Mr. Mithun Mondal,
Mr. Md. Arsalan ... for the O.P. No.2.
Mr. Saryati Datta ... for the State.

1. This appeal has been filed assailing the order dated 06.03.2023 passed by the learned Special Judge/Additional Sessions Judge, 1st Court, Barasat, North 24 Parganas, whereby learned Judge granted bail to the private opposite party No.2 on the grounds mentioned in the order itself.
2. Mr. Avik Ghatak, learned counsel appearing on behalf of the appellant/de-facto complainant has submitted that this case was registered in connection with Special Case No. 02 of 2023 arising out of Bidhannagar Police Station Case No. 173 of 2022 against the accused under Sections 3(i)(r)/3(i)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.
3. After investigation charge-sheet was submitted and

learned Special Judge took cognizance of the offence and fixed the matter regarding issuance of warrant till 16.02.2023 when learned Judge issued warrant fixing on 11.5.2023 for ER of WA. Prior to 11.05.2023 record was put up on 06.02.2023 at the instance of accused/private opposite party no.2 by filing another petition along with vakalatnama and documents with a prayer for bail. The accused was taken into custody and granted bail on that application holding, inter alia, that learned Special P.P. sent notice to the de-facto complainant.

4. In support of prayer for cancellation of bail, learned counsel appearing on behalf of the appellant has relied on a ratio in the case *Hariram Bhambhi Versus Satyanarayan and Another* reported in 2021 SCC OnLine SC 1010.
5. Mr. Imtiaz Ahmed, learned counsel appearing on behalf of the private opposite party No.2 has submitted that in the impugned order learned Special Judge noted the communication of notice to the de-facto complainant but he failed to appear before the Court.
6. On careful perusal of the order impugned, I find that learned Special Judge relied on the submission of learned Special P.P. who submitted that notice was sent to the de-facto complainant but the learned Judge did not decide as to service of notice
7. I am astounded to know how the learned Special Judge

satisfied himself regarding service of notice to the de-facto complainant only on the submission of learned Special P.P that too on a day when matter was put up at the instance of accused/private opposite party No.2 certainly before the date fixed (11.05.2023) by the earlier order dated 16.02.2023 while warrant was issued.

8. However, regarding compliance of Section 15A of the SC and ST Act, I find that de-facto complainant was not informed regarding bail application filed at the instance of accuse/private opposite party No.2.

9. In the case of *Hariram Bhambhi (supra)*, Hon'ble Apex Court held in paragraph 22, which is as follows:

“22. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.”

10. Considering all facts and circumstances, I have discussed hereinabove along with ratio quoted

above, I am of the view that the bail application disposed of by the learned Special Judge on 06.03.2023 is liable to be cancelled.

11. Accordingly, the bail granted to the accused/private opposite party No.2 by the order dated 6.3.2023 in connection with Special Case No. 02 of 2023 arising out of Bidhannagar Police Station Case No. 173 of 2022 stands cancelled.
12. Opposite party No.2/Jyotirmoy Panda shall surrender in the custody of the Special Judge on or before 29.01.2023.
13. The accused/private opposite party No.2 is at liberty to file bail application and the learned Special Judge shall dispose of that application, if filed, in accordance with law.
14. With the aforesaid observation, the appeal stands disposed of.
15. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.
16. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)