

Court No. 29
(266041)

30.07.2024

(AD 37)

(S. Banerjee)

CRM (DB) 2768 of 2023

with
CRAN 1 of 2024

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

And

In the matter of: XXXX

...petitioner

Mr. Krishan Ray
Mr. Pronojit Roy

... for the petitioner

Mr. Habibur Rahaman
Mr. Archisman Singh

... for the OP 2

1. The daughter of the petitioner is the victim of an alleged sexual offence. The prayer for cancellation of bail is on the basis that the victim was not here before the said application for anticipatory bail was considered.
2. Learned counsel for the petitioner submits that in view of the decision of the Hon'ble Supreme Court in *Jagjeet Singh & Ors. -Vs.- Ashish Mishra @ Monu & Anr.*, reported in 2022(9) SCC 321 and a decision of a learned Single Judge of Karnataka High Court in *Informant -Vs.- State of Karnataka, by Maddur Police & Anr.*, reported in 2023 SCC OnLine Kar 69, any order passed without hearing the victim would be non-est in law. It is, however, admitted that there is no statutory requirement as such, in view of the law laid down by several decisions of the Hon'ble Supreme Court and other High Courts, it becomes now incumbent for the court

considering the application for anticipatory bail to hear the victim. However, on merits no argument was advanced. It is submitted that if an opportunity would have been given to the victim, the court could have considered the facts that might have been ignored at the time of consideration of the application for anticipatory bail. The petitioner has relied upon certain information slip to contend that the matter was taken up on a date not fixed and as such, the victim could not be represented.

3. In the aforesaid background, we feel that the prayer for anticipatory bail may be appropriately dealt with by the court as the record of the trial court should reveal whether any notice was served upon the victim before the application was taken up for consideration and if it appears that the victim was not served prior to the application being taken up for consideration on the date fixed, the jurisdictional court may reconsider the matter and decide the application for anticipatory bail afresh by giving opportunities to the parties, including the victim. However, in the event in spite of adequate notice the victim had failed to appear, the prayer for cancellation of bail cannot be considered on such ground.
4. We make it clear that we have not gone into the merits of the order.
5. Any application to be made by the victim, shall be upon notice to the opposite party no. 2 and the State.

6. With the above observation the application (CRM(DB) 2768 of 2023), along with CRAN 1 of 2024, stands disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)