

03.10.2024

Item No.6
Ct.No.35
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

C.R.A. (SB) 137 of 2024

**Siuli Sow Mondal
versus
State of West Bengal & Anr.**

Mr. Sujoy Sarkar,
Mr. Prasun Mukherjee,
Ms. Sneha Srivastava ... For the Appellant.

Mr. Debasish Roy, Ld. P.P.,
Mr. Arijit Ganguly,
Ms. Rajnandini Das ... For the State.

Mr. Saryati Datta,
Mr. Sanjib Kumar Dan,
Mr. Chitrak Biswas ... For the Respondent No.2.

Affidavit-in-reply filed on behalf of the appellant be kept
with the record.

The subject-matter of the order relates to cancellation
of bail in respect of offences under the provisions of
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989.

The learned advocate appearing for the appellant
submits that no opportunity was granted to the appellant
while the bail application was moved.

Mr. Roy, learned Public Prosecutor drew the attention
of the Court to the order dated 20.06.2024 passed by learned
Judge, Special Court under SC & ST (POA) Act, Suri,
Birbhum wherefrom it reflects that – “*Ld. Advocate on behalf
of defacto complainant is present by filing hazira along with
vokatnama. Let the same be kept with the record*”.

Learned Public Prosecutor submits that the *de facto* complainant was present in court when the bail application was advanced.

Learned advocate for the respondent no.2 has also referred to an annexure at page 19 which reflects that an application was filed by the learned advocate for the appellant which is self-contradictory and which reflects that at paragraph 1, the learned advocate has contended that he was engaged in another court when the bail application was considered. The subsequent paragraphs reflect that if the accused/respondent is granted bail, in that case it would create hardship at the place of work and in the locality concerned. The submissions to this effect on behalf of the learned advocates for the State and the accused/respondent no.2 are that this application could not have been drafted prior to the order of bail being passed and the overall contents would reflect that this application was filed prior to the prayer for bail being considered by the learned Special Court.

Be that as it may, the provisions which are incorporated under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are for ensuring the interest of the *de facto* complainant. In this case, the learned Special Court gave opportunity to the *de facto* complainant as the word “hazira” was used which reflects that the *de facto* complainant should have been present in court, otherwise in the alternative there should have been an absent petition filed at the instance of the appellant. The subsequent plea that the

lawyer was busy in another court, do not satisfy the requirements of Section 309 of the Code of Criminal Procedure wherein the business or engagement of a lawyer in a different court is no ground to postpone the proceedings of the court.

I have also considered the case diary and I find that although there are allegations, but the seizure list reflects that the CDR and the SDR were downloaded by the Investigating Officer of the case where 214 calls were made by the *de facto* complainant and the accused made 69 calls. The parties are known to each other as they work in the same school and so far as the accusation regarding sexual abuse is concerned, except statements, nothing has been retrieved from the social networking site which would corroborate the oral statement concerned. At this stage, the application has been made for cancellation of bail as the *de facto* complainant has not availed the opportunity which was granted by the learned Special Court and the records reflect that she was represented by a lawyer who did not give priority for appearance so far as this proceeding is concerned.

As such, I am not inclined to interfere with the order of bail granted by the learned Special Court on 20.06.2024.

Accordingly, CRA (SB) 137 of 2024 is dismissed.

Case diary be returned to the learned advocate appearing for the State.

Pending connected application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)