

15.04.2024.
77.
Ct.No.28.
as

C.R.M. (DB) 3659 of 2023

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

In the matter of : **Mother of the victim girl.**

... Petitioner.

Mr. Sekhar Kr. Basu, Id. Sr. Adv.,
Mr. Soubhik Mitter,
Ms. Rajnandini Das,
Mr. Karan Bapuli.

...for the Petitioner.

Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Dipankar Paramanick.

...for the State.

Mr. Soumyajit Das Mahapatra,
Ms. Madhurai Sinha.

....for the Opp. Party No.2.

1. Learned Senior Advocate for the petitioner submits that the Judge erred in law in granting bail without giving notice to the victim. He contends statement of the victim before Magistrate was not recorded in terms of Section 26 of the POCSO Act. Accordingly, he prays for cancellation of bail.
2. Learned Advocate for the State produces the Case Diary.
3. Learned Advocate for the opposite party No.2/accused submits that the materials on record do not disclose ingredients of offences under the POCSO Act.
4. We have considered the materials on record. We have also examined the statement of the victim recorded under Section 164 of the Code of Criminal Procedure.

In her statement, victim stated that she was gossiping with the petitioner when her father intervened. Gossiping with a minor by itself would not constitute offence under the provision of POCSO Act. It is strongly contended statement of the minor had not been recorded in terms of Section 26 of the POCSO Act as the guardian of the victim was not present when the statement was recorded. This issue may be agitated by the petitioner before the appropriate forum in accordance with law. However, in light of the materials on record when the bail was granted, it cannot be said that the uncontroverted materials particularly the statement of the victim disclosed an offence under POCSO Act far less under Section 4 thereof.

5. Accordingly, we are of the opinion no case for cancellation of bail of opposite party no.2 is made out.
6. Accordingly, the application is rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)