

26.09.2024
Serial no. 22
(Dd)

*Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side*

CRM (DB) 477 of 2024

In re : An Application for cancellation of Bail under 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (previously under Section 439(2) of the Code of Criminal Procedure, 1973.

-And-

In the matter of : The State of West Bengal
... ..Petitioner

Mr. Aditi Shankar Chakraborty, APP
Mr. Sagnik Sankar Sikdar,
Dr. Arjun Chowdhury, Advocates
... .. For the Petitioner/State

Mr. Kunaljit Bhattacharjee,
Mr. Alok Sah, Advocates
... ..For the opposite parties

1. State is before the Court seeking cancellation of bail granted to the private opposite parties by Order No. 11, dated August 13, 2024 passed by the learned Judge, Special Court, Alipurduar in Special Case No. 70 of 2024.
2. Learned advocate for the State submits that a minor of 12 years suffered penetrative sexual assault. He refers to the medical examination report in the case diary in this regard. He submits that, neighbours saw the opposite parties to enter and leave the place of occurrence. Such statement is corroborated by the tower location of the mobile phones of the opposite parties.
3. Learned advocate for the State submits that, post the grant of bail, the private opposite parties

accosted the maternal uncle of the victim at a particular spot and threatened the maternal uncle with dire consequences if the police case was not withdrawn.

4. Learned advocate for the State draws the attention of the Court to the impugned order. He submits that, no reason was ascribed by the learned Judge in granting bail. According to him, filing of charge sheet *ipso facto* cannot entitle an accused to the grant of bail. Other aspects such as gravity of the offence, involvement of the accused in the crime as transpiring from the materials in the case diary were not looked into and considered by the learned Judge while granting the bail. According to him, the impugned order is non-speaking.
5. Learned advocate appearing for the private opposite parties submits that the allegation of the maternal uncle of the victim is false. Such allegation was made for the purpose of obtaining an order of cancellation of bail.
6. Learned advocate appearing for the private opposite parties submits that, the order granting bail records the reasons for the same. He points out that the learned Judge took pains to record that, the learned Judge perused all the materials and heard the submissions of the lawyers for both the sides and, thereafter, proceeded to grant bail. He submits that, the bail granted need not be cancelled.
7. We considered the rival contentions of the parties. Police case relates, *inter alia*, under Section 6 of the POCSO Act. Medical evidence of the victim suggests penetrative sexual assault.
8. There are statements recorded under Sections 161 and 164 of the Criminal Procedure Code of persons

who claim that they saw the private opposite parties to enter and leave the place of occurrence at the time of the incident.

9. Case diary shows that, a test identification parade was held in which the private opposite parties were identified by the victim as the perpetrators of the crime.
10. There is a police complaint lodged subsequent to the grant of bail by the maternal uncle of the victim against the private opposite parties.
11. We perused the order dated August 13, 2024 by which, the learned Judge granted bail to the private opposite parties. Learned Judge although records that, learned Judge perused all the materials and heard the submissions of the learned lawyers for both the parties, learned Judge, however, does not record the materials which persuaded him to grant bail. All that the impugned order says is that the charge sheet was submitted and charges were framed and since the trial will commence by trial Court for evidence, further custody of the private opposite parties was not required.
12. With respect, learned Judge failed to take into account the gravity of the offence, the materials in the case diary which implicate the private opposite parties in such heinous crime while granting bail to the private opposite parties. Moreover, learned Judge failed to overlook the fact that, enlarging the private opposite parties on bail prior to the victim being examined in respect of such heinous crime, is likely to affect the trial.
13. In our view, the order passed the learned Judge granting bail is non-speaking. Filing of charge sheet, framing of charge and the police case being

set down for trial trial *piso facto* are not grounds for grant of bail. Such facts must be accompanied by consideration of the gravity of the offence and the involvement of the accused therein, amongst others for grant of bail to the accused. Learned Judge also did not allude to the period of detention for the grant of bail. Period of detention so far as the private opposite parties are concerned is not such that, bail is warranted in view of the Constitutional guarantee of personal liberty. In any event, dates of trial were fixed and, therefore, enlarging the private opposite parties on bail was not called for.

14. In such circumstances, we cancel the bail granted by the order dated August 13, 2024. Private opposite parties will surrender before the jurisdictional Court within seven days from the date. In default, jurisdictional Court will take appropriate steps.
15. At this stage, learned advocate appearing for the private opposite parties submits that the observations made in this order will prejudice his client at the trial.
16. We clarify that our observations are limited for the purpose of considering an application for cancellation of bail and that none of the observations made will prejudice any of the parties at the trial.
17. Learned advocate appearing for the State invites the attention of the Court to the provisions of Section 35 of the POCSO Act and prays for a direction in that regard to the learned Trial Court.
18. No doubt, learned trial Judge will keep in mind the provisions of Section 35 and will endeavour to implement the same as practicable. Learned trial Judge will proceed to fix consecutive dates of trial.

19. CRM (DB) 477 of 2024 is **disposed of** accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)