

12.03.2025
85
Court No.26
S.D.

C.R.M (DB) 622 of 2024

In re: An Application for cancellation of bail under Section 439 (2) of the Code of Criminal Procedure, 1973 in connection with Pandua Police Station Case No. 462/2022 dated 06.10.2022 Under Sections 376AB of the Indian Penal Code read with Section 6 of the POCSO Act.

-And-

In the matter of: XXXXXX

... .. Petitioner

Mr. Manjit Singh, Sr. Adv.,
Mr. Sk. Sahid Hossain
Mr. Biswajit Mal
Mr. Arkaprabho Roy
Mr. Soujanya Pattanyak
Mr. M. Rahamkan
... .. For the Petitioner
Mr. Rudradipta Nandy, Ld. A.P.P.,
Ms. Zareen N. Khan
...For the State.
Mr. Milon Mukherjee
Mr. Sumon Chakraborty
...For the O.P. No. 2

Petitioner prays for cancellation of bail granted by the Order No. 11, dated January 18, 2024.

Learned advocate appearing for the petitioner submits that the petitioner obtained bail on the basis of averments made in the application for grant of bail which are demonstrably false. He points out paragraph 8 of the application of bail and submits that High Court rejected the

prayer for bail of the private opposite party on March 27, 2023. He points out that such fact was not brought to the notice of the learned Court granting bail to the private opposite party.

Learned advocate appearing for the petitioner submits that since the police case involves a crime against a woman, notice and the application for grant of bail was required to be served upon the defacto complainant. In the present case, defacto complainant was not served and not heard prior to the order granting bail.

State and the private opposite party are represented.

Learned Senior advocate appearing for the private opposite party submits that the trial is in progress. Only two prosecution witnesses remain to be examined at the trial. He submits that instead of cancelling the bail, a direction may be issued for expeditious disposal of the trial. He submits that there is no post bail misconduct so far his client is concerned.

State is represented.

Trial is in progress.

There is no evidence of the bail application of the private opposite party being served upon the defacto complainant or the defacto complainant being heard at the time of grant of the bail on January 18, 2024 by the learned Additional Sessions Judge. Charges framed as against the private opposite party *inter alia* under Section 6 of the

POCSO Act and Section 376AB of the Indian Penal Code, 1860.

Learned Additional Sessions Judge proceeded to grant bail on the basis that the evidence of the victim girl and the parents were over. Learned Additional Sessions Judge took into consideration the period of detention of the private opposite party. Learned Additional Sessions Judge thereafter proceeded to grant bail by the order dated January 18, 2024.

Such order dated January 18, 2024 was passed on the basis of an application filed by the private opposite party. In paragraph 8 of such application, private opposite party stated as follows:-

“8. That after submitting of charge sheet no rejection of bail from upper court i.e. Honourable High Court Kolkata or Hon’ble Supreme Court prior to this application.”

Such paragraph 8 was verified as true and best to the knowledge and belief of the deponent of the petitioner for bail. The deponent of such petition is the person who claims to be the authorized agent of the private opposite party.

Records depict that private opposite party approached the High Court for bail by way of C.R.M. (DB) 968 of 2023, which was rejected on March 27, 2023. Such fact was not brought to the notice of the learned Additional Sessions Judge when the order dated January 18, 2024 was passed.

In fact, such order was obtained on a basis of an averment which was false.

In such circumstances, since the private opposite party is guilty of suppressing of material of fact, we cancel the bail granted in favour of the private opposite party on January 24, 2024. Private opposite party will surrender before the Jurisdictional Court within seven days from date. In default, appropriate steps be taken before the Jurisdictional Court to secure its attendance.

C.R.M. (DB) 622 of 2024 is disposed of.

(Debangsu Basak, J.)

(Smita Das De, J.)