

30.07.2025
Item No.17.
Daily List
Court No.42
Mithun

**IN THE HIGH COURT AT CALCUTTA.
CRIMINAL MISCELLANEOUS JURISDICTION**

CRM (DB) 816 of 2025

In Re:- An application under Section 439(2) of the Code of Criminal Procedure, 1973/Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 in Special Case No.439/2024, arising out of Canning Women Police Station Case No.37/2024 dated 17.11.2024 under Section 376(2)(f)/376(2)(n)/376(3)/506/34 of the Indian Penal Code and Sections 6/17 of Protection of Children from Sexual Offences Act whereby interim bail was granted to the accused/opposite party no.2.

-And-

In the matter of : XXXXXX

... Petitioner

Mr. Debajyoti Deb,
Mr. Tamal Ghosh,
Ms. Somdyuti Parekh,
Mr. Harshwardhan Kr. Jha

... For the Petitioner

Mr. Jewel Chanda

...for opposite party no.2.

Ms. Baisali Basu,
Mr. Sachit Talukdar

... For the State

1. This is an application seeking for cancellation of bail granted in favour of opposite party no.2/accused precisely on the ground that the victim has not been impleaded as a party in the bail application and the copy of the application was not served upon the victim nor intimation of bail hearing was given.
2. Learned Advocate for the petitioner submits that though the victim was represented by her learned Advocate at the time of hearing of bail application, however, the victim has neither

been impleaded as a party in such bail application nor prior intimation of hearing of bail application before the learned Court was given. The copy of the bail application was also not served upon the victim. In the hearing of bail application under the POCSO Act, the victim has to be mandatorily impleaded as a party in the bail application. To buttress his contention, he relies on the decision of Hon'ble Supreme Court passed in ***X versus The State of Uttar Pradesh & Anr.*** in ***Criminal Appeal No. 5385 of 2024*** and the decision of this Court passed in ***C.R.M. (DB) 1977 of 2023***. On such grounds, he seeks for dismissal of the bail application.

3. On the contrary, learned Advocate for opposite party no.2/accused submits that the victim was represented by her learned Advocate on the date the bail application was considered by the learned Trial Court. The provisions of law as incorporated is to provide participatory rights to the victim in a criminal proceedings, particularly, in POCSO cases. Since the victim was represented by her learned Advocate before the Trial Court, therefore, the question of giving further intimation does not arise at all. The learned advocate for the victim did not raise any issue before the learned Trial Court that the copy of bail application was not served. Further, the victim and the opposite party no.2 had love affairs. Considering the same, the learned Trial Court granted bail to opposite party no.2 which should not be interfered with.
4. Learned Advocate for the State submits that the victim did not raise any objection regarding non-service of copy of the bail application or intimation not given on earlier occasion

when the bail prayer of opposite party no.2 was rejected by the learned Trial Court. Only when the bail was granted, the petitioner has raised such issue of non-intimation or non-service of copy of bail application. He also indicates that the victim has been represented by her learned Advocate throughout the proceedings. He also seeks for dismissal of the bail application.

5. Sub-Section(1A) to Section 439 of the Code of Criminal Procedure (*hereinafter referred to as 'Cr.P.C.'*), *inter alia*, provides that presence of informant or her authorised representative is obligatory at the time of hearing of bail application in sexual offences involving rape of minors.
6. Therefore, the primary issue which is to be examined is whether the victim was allowed opportunity to participate and oppose the bail application.
7. In ***Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & Anr.*** reported in ***(2022) 9 SCC 321***, the right of a victim to be heard in a bail application was recognized. The Court held as follows:-

"23. A "victim" within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a "victim" has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that "victim" and "complainant/informant" are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a "victim", for even a stranger to the act of crime can be an "informant", and similarly, a "victim" need not be the complainant or informant of a felony.

24. *** **

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

8. This Court in *C.R.M. (DB) 1977 of 2023* considered the law declared in *Jagjeet Singh (supra)* and observed as follows:-

“7. This provision and the law declared in **Jagjeet Singh (supra)** marks the expanding participatory rights of the victim in criminal jurisprudence. Sub-section (1A) of section 439 CrPC makes the presence of the informant a pre condition for bail hearing in cases involving rape of minors. The law presumes the informant (if she is not the victim herself) is a person interested in the victim and her presence would ensure ventilation of the concerns of the victim. The ratio in **Jagjeet Singh (supra)** enjoins when the victim is present during bail hearing, she shall have a right to participate therein. Right to be present during bail hearing would be rendered illusory if the right to be notified of such hearing is not read into it. A conjoint reading of the participatory rights from this perspective makes it imperative that notice of bail hearing in cases involving rape of minors must be given to the informant to ensure her presence and participation during the hearing.”

9. In Criminal Appeal No.5385 of 2024 and Criminal Appeal No.5386 of 2024, substantial question of law before the Hon’ble Supreme Court was whether the appellant should have been given an opportunity of hearing and should have been made a party in the bail proceedings filed by the concerned respondent before the High Court.
10. The object behind impleading the victim in the bail application and giving the victim prior intimation is to provide opportunity to the victim to participate in the bail hearing.
11. The proposition as laid down in the above decisions as well as the provisions under Sub-Section 1A to Section 439 of Cr.P.C. makes the presence of informant or her authorised representative a pre-condition for bail hearing and recognizes

the participatory rights of the victim in criminal jurisprudence.

12. Reverting back to the facts of this case, it is found that the victim was represented by her learned Advocate before the learned Trial Court when the matter was taken up for consideration of bail prayer of opposite party no.2. Therefore, the pre condition for bail hearing of the presence of the informant or her authorised representative as envisaged under Section (1A) of 439 CrPC has been fulfilled.
13. It is found from the order impugned that the learned Advocate for the *de facto* complainant was allowed to participate and he raised objection with regard to the prayer for bail.
14. Considering the above, since the victim was represented by her learned advocate, who was allowed to raise objection to the bail prayer, hence it can be said that participatory rights of the victim has been taken care of by the learned Trial Court. Therefore, there is no breach or infraction in participatory rights of the victim in the bail hearing.
15. In view of the above discussion, this Court is not inclined to interfere with the bail allowed in favour of the opposite party no.2.
16. Accordingly, **CRM (DB) 816 of 2025** stands dismissed.

(Bivas Pattanayak, J.)