

12.08.2025  
Item no.3  
Court No.42  
ss

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

**C.R.M.(DB) 1436 of 2024**

In Re: An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, 1973 in connection with S.C. 428 of 2023 arising out of Bhagwanpur Police Station Case No.247 of 2023 dated 08.06.2023 under Sections 341/323/325/363/506/34 of the Indian Penal Code subsequently charge sheet has been submitted adding Section 6 of POCSO Act pending in the Court of the learned Additional Sessions Judge, 1<sup>st</sup> Court, Contai, Purba Medinipur.

In Re : Father of Victim Girl

.... Petitioner.

Mr. Tapan Dutta Gupta  
Mr. Parvej Anam  
Ms. Rituparna Ghosh

... for the petitioner

Mr. Antarikhya Basu  
Ms. Diksha Ghosh

... for the State

Mr. Debajyoti Deb  
Mr. Pabitra Biswas

... for the opposite party no.2

This is an application for cancellation of bail.

Learned Advocate for the petitioner submits that the order granting bail to opposite party no.2 is perverse since the court has granted bail to opposite party no.2 only on the ground of parity with the co-accused namely, Mahadeb Barman. There are specific allegations against the opposite party no.2 of kidnapping and entering into forcible physical relationship with the victim, which has not been considered by the learned trial court. He seeks for cancellation of bail granted in favour of the opposite party no.2.

On the contrary, learned Advocate for the opposite party no.2 submits that the victim and the petitioner are married and they have a 1½ years old child. On the date of lodgement of FIR, the victim had attained majority and therefore, the offence under POCSO Act is not made out. The opposite party no.2 stands on the same footing as of the person enlarged on bail earlier. There is no perversity in the order of learned trial court granting bail to opposite party no.2. He seeks for dismissal of the application for cancellation of bail.

Learned Advocate for the State submits that the victim in her statement before the Magistrate has categorically implicated the opposite party no.2 of kidnapping her and of commissioning penetrative sexual assault upon her which led to pregnancy of the minor victim and subsequently she delivered a child. The opposite party no.2 does not stand on the same footing as of the co-accused who has been granted bail and therefore, the order granting bail to the opposite party no.2 is perverse and should be cancelled and set aside.

Perused the case diary and materials on record.

The learned trial court in the impugned order dated 20<sup>th</sup> September, 2023 observed as follows:

*“On perusal of case record and case diary it is found that primary allegation against the accused person is that he had assaulted the de facto complainant and taken away the daughter of the de facto complainant. The co accused persons has already been granted by this Court. This accused is on the same footing. Moreover, charge sheet has already been submitted and there is no scope of development in investigation.”*

Upon bare reading of the impugned order of learned trial court, it is found that while granting bail to opposite party no.2,

the learned trial court has observed that the opposite party no.2 stood on the same footing as of the co-accused, Mahadeb Barman, who was earlier granted bail. Now it is to be examined whether the opposite party no.2 stands on the same footing as of the other co-accused. On perusal of the statement of the victim, it is found that on 9<sup>th</sup> September, 2020 the opposite party no.2 along with his aunt took away the victim and she was forced into marriage. There are also allegations of forcible physical relationship by the opposite party no.2 with the victim. The victim became pregnant and she delivered a child. Thus, it appears from the allegation as made out against the opposite party no.2 that he does not stand on the same footing as of the co-accused, Mahadeb Barman who has been granted bail earlier. It has been strenuously argued on behalf of the opposite party no.2 that on the date of lodgement of the complaint the victim attained 18 years and thus the offence under POCSO Act is not attracted. It is pertinent to note that the incident occurred on 9<sup>th</sup> September, 2020. The charge-sheet reveals that the date of birth of the victim is 9<sup>th</sup> June, 2005. Therefore, primarily, it is found that on the date of occurrence the victim was a minor.

In the aforesaid backdrop, it is found that the finding of the learned trial court that the opposite party no.2 stand on the same footing as of co-accused namely, Mahadeb Barman is not proper.

In view of the above, the bail granted by the learned trial court to opposite party no.2 vide order no.12 dated 20<sup>th</sup> September, 2023 stands cancelled.

Learned trial court is directed to take coercive steps for committing opposite party no.2 to custody.

Parties are directed to communicate this order to the learned trial court.

Accordingly, **CRM (DB) 1436 of 2024** stands disposed of.

Let a copy of this order be forwarded to the learned trial court for information and necessary compliance.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**