
(2017) 04 MP CK 0145
In the Madhya Pradesh High Court
Case No : 13764 of 2016

SMT. LALITA DEVI TRIPATHI

APPELLANT

Vs

THE STATE OF MADHYA PRADESH & ORS.

RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#), [Section 439 \(2\)](#) - Special powers of High Court or Court of Session regarding bail - Special powers of High Court or Court of Session regarding ba

Citation : (2017) 04 MP CK 0145

Hon'ble Judges : C V SIRPURKAR

Bench : Single Bench

Advocate : H.D. Gupta, Neerendra Sharma, A.S. Yadav, Prashant Sharma

Judgement

1. The present petition filed u/s 439 (2) Cr.P.C. seeks cancellation of bail granted on 24.06.2016 in M.Cr.C. No. 7136/2016, enlarging the said respondent No.2 on bail in connection with offences punishable under Section 294 and 506 IPC and Section 3(1) (X) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 (hereinafter referred as " 1989, Act"), registered as Crime No. 357/2016 at Police Station Gole Ka Mandir, Distt. Gwalior (M.P.).

2. Learned counsel for the applicant raise the following grounds for seeking cancellation of bail granted to respondent No.2 :-

(i) The offence in question was committed on 13.02.2016 which is after the amendment in the 1989 Act w.e.f. from 26.01.2016 and therefore, the respondent No.2 could not have filed petition under Section 439 Cr.P.C. but ought to have filed a criminal appeal in view of Section 14A of the amended 1989 Act.

(ii) More so, though this Court in M.Cr.C. 7136/2016 initially directed the State to inform the victim but without ensuring service of notice on the victim the impugned order dated 24.06.2016 admitting respondent No.2 on bail was passed.

3. On the other hand, learned counsel for the respondent State and victim raised the following contentions :-

(i) The ground raised by the applicant are untenable in view of the limited scope of this Court while exercising power under Section 439(2) Cr.P.C.

(ii) The victim was duly afforded opportunity of opposing bail application before the Special Judge before whom the victim expressed no objection. However, the lower Court by order dated 20.06.2016 dismissed the bail of the respondent No.2 which led to filing of M.Cr.C. No. 7136/2016 in which the impugned order has been passed.

(iii) Reliance is placed on 2001 (6) SCC 318 and AIR 1984 SC 374.

4. Admittedly the offence in regard to which the bail was granted to respondent No.2 was committed after the amendment in the 1989 Act which became effective from 26.01.2016. Thus appeal under Section 14A was maintainable against the order of rejection of bail by the Special Court and not an Cr.P.C. 4.1 True it is that an appeal ought to have been filed by the respondent No.2 but it is equally settled in law that benefit of bail once extended under the law cannot be withdrawn on mere detection of procedural lapse unless substantial injustice or inherent lack of jurisdiction is pointed out. No doubt the High Court had the jurisdiction to grant bail but in an appeal and not in an M.Cr.C. The bail granted was in M.Cr.C. u/s 439 Cr.P.C. and therefore, the defect pointed out is merely of form and procedure but not of substance. In this regard this court drawn inspiration from the decision of Apex Court in the case of Willie (William) Slaney Vs. State of M.P. & ors. reported in AIR 1956 SC 116 the relevant extract of which is reproduced below :-

"(6) Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly M.Cr.C. 13764/2016 explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is "substantial" compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."

4.2 However the aspect of non-affording of opportunity to the victim before

granting of bail to respondent No.2 relates to substantial right which is vested in victim under the amended provision of 15 A (3) where prior opportunity to the victim is mandatory, even in bail proceedings.

4.3 Admittedly, in the instant case, State was directed to inform the victim at the time of taking cognizance of M.Cr.C. 7136/2016 by order dated 24.06.2016 but when the respondent No.2 was admitted to bail on 01.07.2016 the victim was not heard and neither was there any material to establish that victim was served with notice. 4.4 It seems that due to inadvertence this Court did not ensure affording of opportunity of hearing to the victim. 4.5 The question thus arises as to whether in the given facts and circumstances any substantial right of the petitioner / victim is breached by not affording him reasonable opportunity of being heard while passing the impugned order.

5 For ready reference and convenience Section 15 A of the amended 1989 Act is reproduced below :-

"15A. Rights of victims and witnesses - (1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special M.Cr.C. 13764/2016 Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

- (c) the social-economic rehabilitation during investigation, inquiry and trial; and
- (d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including--

- (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

- (b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

- (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause

- (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--

- (a) to provide a copy of the recorded First Information Report at free of cost;

- (b) to provide immediate relief in cash or in kind to atrocity victims or their

dependents;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the atrocity victims and their dependents;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to atrocity victims or their dependents or associated organizations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.

6. A bare perusal of the above provision indicates that by way of amendment applicable from 26.01.2016 the victim has been given right of reasonable, accurate and timely notice inter alia of bail proceedings.

7. In this legal and factual background the question that begs for an answer is whether breach of this right of victim would amount to vitiation of the bail granted to the accused without ensuring service of notice of the bail petition to the victim?

8. The arguments of respondent No.2 that since the victim had not objected to the bail to the respondent No.2 before the Special Judge, the victim is estopped from raising any objection in the High Court, does not appeal to this Court. The reason being that the amended Act of 1989 contemplates affording of opportunity to the victim of being heard inter alia as and when the question of grant or refusal of bail is decided by any Court, be it Special Court, High Court or the Supreme Court.

9. Thus every time when petition for bail is filed either before the special Court or before the High Court, the exercise of intimating the victim of the factum of accused having claimed bail is required to be undertaken. Merely because opportunity was afforded and availed by the victim before the Special Judge in a petition for bail filed by the accused does not exempt the requirement of intimating the victim again of request for bail moved by the accused before the High Court on being unsuccessful before the Special Judge. Such an interpretation is in line with the objects sought to be achieved by the Act.

10. One of the objective of the act is to afford due and sufficient opportunity to the victim for whose protection and rehabilitation the 1989 Act has been promulgated, to raise objection before any order is passed in favour of the accused in 1989 Act. The term "victim" was not originally defined in the 1989 Act but its meaning was borrowed from the Cr.P.C / I.P.C., has now been separately defined u/s 2 (1) (ec) after the amendment to the 1989 Act w.e.f. 26.01.2016. This clearly reflects intention of the Legislature of attaching importance to the role of victim by allowing the victim to be as much part of any criminal proceedings as are the prosecution and accused. Thus denial of opportunity to the victim to be heard in any of the proceedings under the Act of 1989 would render the end result vitiated.

11. Since the impugned order passed is inherently lacking in jurisdiction for having been passed in violation of the mandatory provision of Section 15A(3) of the amended 1989 Act, the same cannot be sustained in the eye of law and therefore invites the wrath of Section 439(2) Cr.P.C.

12. Accordingly, the bail order dated 24.06.2016 passed in is cancelled and the said M.Cr.C. is restored to its original number for being heard again.

13. Before parting it would be appropriate to direct that since the allowing of this petition under Section 439 (2) Cr.P.C by cancelling the bail order dated 24.06.2016 in M.Cr.C. No. 7136/2016 is based upon a reason which is attributed to this Court and not to the respondent No.2, this Court is of the considered view that respondent No.2 ought not to be prejudiced in view of the maxim *Actus curiae neminem gravabit* (an act of the Court shall prejudice no one). Accordingly, this Court directs that if the respondent No.2 furnishes fresh bail bond of Rs. 50,000/- (Rs. Fifty Thousand only) with two solvent sureties of like amount within a period of ten working days from today to the satisfaction of the learned trial Judge, he shall be released on bail which shall remain subject to

final verdict in M.Cr.C. No. 7136/2016.

No cost.