HIGH COURT OF DELHI

CORAM: HON'BLE MR. JUSTICE NAVIN CHAWLA

Date of Decision: 14th February 2024

CRL.A. 526/2023

X ...APPELLANT

VERSUS

STATE NCT OF DELHI & ANR. ...RESPONDENTS

Legislation:

3(1)(w)(i), 3(2)(v), 14, 15A of Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989

Sections 376, 354B, 506 of the Indian Penal Code (IPC)

Subject: Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Bail Proceedings – Mandatory Notice to Victim – Compliance with Sections 15A(3) and 15A(5) – Right to be Heard – Observance of Principles of Natural Justice – Effect of Non-Service of Notice on Victim – Bail Grant in Contravention of Statutory Provisions – Setting Aside of Bail Order.

Headnotes:

Challenge to Bail Process – Bail granted to Respondent No. 2 without serving notice on the appellant, alleged victim, in violation of Section 15A(3) and Section 15A(5) of the SC & ST Act – Reliance on Supreme Court judgment in Hariram Bhambhi v. Satyanarayan & Anr., 2021 SCC OnLine SC 1010, to argue that bail granted without notice and opportunity of hearing to appellant is liable to be set aside. [Paras 1-2, 9-11, 14-15]

Procedural Requirements for Bail under SC & ST Act – Mandatory provisions under Section 15A(3) and (5) of the SC & ST Act for issuing reasonable notice of bail proceedings to the victim and ensuring the victim's right to be heard – Bail process in the present case found lacking in complying with these requirements. [Paras 12-14]

Setting Aside of Impugned Order – High Court sets aside the impugned order granting bail to Respondent No. 2 due to procedural lapses – Bail application restored for reconsideration by the learned Special Judge after ensuring compliance with procedural requirements and providing an opportunity for the appellant to be heard. [Paras 16-17]

Temporary Relief for Respondent No. 2 – Respondent No. 2 not to be taken into custody for a period of 15 days, subject to orders passed by the learned Special Judge on the renewed bail application. - Appeal Allowed [Paras 20-21]

Referred Cases:

- Hariram Bhambhi v. Satyanarayan & Anr., 2021 SCC OnLine SC 1010

Representing Advocates:

Mr. Trideep Pais, Sr. Adv. With Mr. Mihir Samson, Ms. Asawari Sodhi, Ms. Gargi Sethi, Advs. For appellant

Mr. Shoaib Haider, APP, Mr. S.K. Manan, Sr. Adv. With Mr. Rahul Khan, Mr. Karmanya Singh Choudhary, Mr. Ritik, Mr. Lavish, Advs. For Respondent No. 2

NAVIN CHAWLA, J. (ORAL)

1. This Appeal has been filed under Section 14A(2) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, 'SC & ST Act') by the alleged victim, challenging the order dated 01.04.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-02 (South-District), Saket Courts, New Delhi (hereinafter referred to as the 'Trial Court') granting bail to the Respondent No. 2 herein in FIR no.0077/2022 registered with Police Station: Hauz Khas, South-District, Delhi, under Sections 376/354B/506 IPC & 3(1)(w)(i), 3(2)(v) of SC & ST Act.

2. The limited challenge of the appellant to the Impugned Order is that the same has been passed without serving notice of the application filed by the respondent no.2 seeking bail in the above FIR on the appellant/victim. The learned senior counsel for the appellant submits that the Impugned Order has, therefore, been passed in violation of Section 15A(3) and Section 15A(5) of the SC & ST Act. Placing reliance on the judgment of the Supreme Court in ***Hariram Bhambhi v. Satyanarayan & Anr.,*** 2021 SCC OnLine SC 1010, he submits that as the respondent no.2 has been granted bail without serving the notice of the bail application on the appellant and without giving her an opportunity of hearing and opposing the same, the Impugned Order is liable to be set aside on this limited ground itself. He submits that the appellant is not to plead or show the grounds for cancellation of the bail.

3. On the other hand, the learned senior counsel for the respondent no.2 submits that, in the present case, the learned Trial Court, after hearing the appellant as well, had enlarged the respondent no.2 on bail vide its order dated 09.02.2022. Thereafter, a charge sheet was filed by the respondent no.1 accusing the respondent no. 2 of offence under Sections 376/354B/506 IPC. It was only by way of a supplementary charge sheet, that the prosecution alleged that the respondent no.2 has also committed offence under Section 3(1)(w)(i) and Section 3(2)(v) of the SC & ST Act.

4. By an order dated 04.01.2023, the learned Trial Court took cognizance of the offences under the IPC and SC & ST Act and summoned the respondent no.2.

5. On 23.02.2023, the respondent no.2 appeared before the learned Trial Court and submitted that since the offence under the SC & ST Act were later added by way of a supplementary Charge Sheet, he shall be moving an application for grant of bail in respect of the said offence. The respondent no.2 filed such an application, on which, by an order dated 31.03.2023, the learned Trial Court was pleased to issue notice, including to the appellant herein, to be served through the Investigating Officer (IO).

6. On 01.04.2023, none appeared for the appellant, and the learned Trial Court on considering the facts of the present case, granted bail to the respondent no.2.

7. He submits that therefore, no fault can be found with the Impugned Order as notice on the application filed by the respondent no.2 seeking bail had been issued by the learned Trial Court to the appellant before passing the Impugned Order.

8. I have considered the submissions made by the learned counsels for the parties.

9. The Impugned Order does not reflect or even record the satisfaction of the learned Trial Court that the notice issued by it vide order dated 31.03.2023 on the application of the respondent no.2 seeking bail, had been duly served on the appellant herein. A perusal of the Trial Court record, summoned by the order dated 22.11.2023 of this Court, also does not show that the notice issued by the learned Trial Court had been duly served on the appellant herein.

10. The learned APP is also not in a position to confirm if the notice on the bail application of the respondent no.2 had been duly served on the appellant by the IO.

11. In view of the above, this Court has to proceed on the assumption that the notice issued on the application filed by the respondent no.2 seeking bail had not been served on the appellant herein prior to the passing of the Impugned Order.

12. Sub-section (3) and sub-section (5) of Section 15A of the SC & ST Act read as under:

*"**15A. Rights of victims and witnesses.***

(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 Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act. xxx

(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."

13. A reading of the above provisions would show that it is mandatory for the Court to issue a reasonable notice of any Court proceedings, including any bail application filed by the accused, to the victim. It further confers a right on the victim or the dependent of a victim to be heard at any proceeding under the Act, including in respect of an application seeking bail.

14. In ***Hariram Bhambhi*** (supra), the Supreme Court, considering the above provisions, has held as under:

"20. When the High Court entertained S.B. Criminal Appeal No.2518/2019 on 7 November 2019, no notice was given to the appellant. The High Court allowed the application for bail. When the appellant moved the High Court for cancellation of bail, the Single Judge took the view that compliance with the principles of natural justice at that particular stage would cure the deficiency. There has been a clear infraction of the mandate of the statute. Sub-sections (3) and (5) have been introduced by the Parliament to ensure a right to be heard to the person against whom the offence is committed or to the dependents. These provisions must be scrupulously observed. We cannot agree with the finding of the Single Judge that the defect in not issuing notice to the victim or their dependent and depriving them of the opportunity to be heard in the concerned proceedings (for grant of bail) can be cured by providing them a hearing in a proceeding that arose subsequently (for cancellation of bail). Compliance with the principles of natural justice must be observed at every stage under the mandate of the statute.

21. Atrocities against members of the Scheduled Castes and Scheduled Tribes are not a thing of the past. They continue to be a reality in our society even today. Hence the statutory provisions which have been enacted by Parliament as a measure of protecting the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes must be complied with and enforced conscientiously. There has been an evident breach of the statutory requirements embodied in sub-sections (3) and (5) of Section 15A in the present case.

22. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice

their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well."
(Emphasis supplied)

15. From the above, it is apparent that where there is an infraction of the mandate of sub-section (3) and (5) of Section 15A of the SC & ST Act, it cannot be cured by providing a hearing to the victim in a proceeding that arises subsequently, including one for cancellation of bail. Compliance with sub-section (3) and (5) of Section 15A of the SC & ST Act is mandatory in nature and the bail granted in contravention thereof is liable to be set aside only on that ground.

16. In the present case, as it has been observed hereinabove that the Impugned Order granting bail to the respondent no.2 has been passed by the learned Trial Court without ensuring service of notice of the application filed by the respondent no.2 seeking bail, on the appellant and without giving an opportunity of hearing on the said application to the appellant, the Impugned Order dated 01.04.2023 granting bail to the respondent no.2 is liable to be set aside. It is ordered accordingly.

17. The application seeking bail filed by the respondent no.2 is restored back to the file of the learned Special Judge. The same shall be considered by the learned Special Judge after giving an opportunity of hearing to the appellant herein, who is the alleged victim.

18. In the meantime, the respondent no.2 shall not be taken into custody for a period of 15 days from today, subject of course to the orders passed by the learned Special Judge on the application of the respondent no.2.

19. I may clarify that this court has not expressed any opinion on the merit of the order dated 01.04.2023 or otherwise.

20. The appeal is allowed in the above terms.

21. There shall be no order as to costs.