VERDICTUM.IN

2024:DHC:2795

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05.04.2024

\+ **CRL.M.C. 4329/2022**

MS. P ..... Petitioner

Through: Mr.Samarth Teotia, Adv. (through VC)

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr.Aman Usman, APP with SI Awdhesh Narayan, PS Rajinder Nagar.
Mr.Sanjay Rastogi, Mr.Aman Rastogi and Ms.Yashima Arora, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 439 (2) of the Code of Criminal Procedure, 1973 challenging the Order dated 14.06.2022 (hereinafter referred to as 'Impugned Order') passed by the learned Additional Sessions Judge (Electricity)-01, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court'), granting bail to the respondent no.2 herein in FIR No.146/2022 registered at Police Station: Rajinder Nagar, Central District, Delhi under Section 376 of the Indian Penal Code, 1860 (in short, 'IPC').

2. The limited grievance of the petitioner/prosecutrix is that the

VERDICTUM.IN

petitioner was not served with a copy of the bail application nor informed of the date of hearing before passing of the Impugned Order.

3. The learned counsel for the respondent no.2 is not in position to deny the said fact.

4. The Status Report filed by the respondent no.1, in fact, supports the plea of the petitioner and goes on to state that even the Investigating Officer (IO) was not informed of the date of hearing of the bail application.

5. As far as IO is concerned, the learned counsel for the respondent no.2 submits that the record of the learned Trial Court reflects that the IO had been duly served.

6. Be that as it may, as it cannot be denied that the prosecutrix had not been served with a copy of the Bail Application, nor was issued notice of the same or given an opportunity to oppose the same, this would be in violation of the directions issued by the Supreme Court on the rights of the victim to be granted unbridled participatory rights in the proceedings and of being heard at every step post occurrence of the offence, including the right to be heard while deciding on the bail application. It has been held that contravention of the same shall result in grave miscarriage of justice. Reference in this regard may be drawn to the judgment of the Supreme Court in ***Jagjeet Singh v. Ashish Mishra*** (2022) 9 SCC 321.

7. Accordingly, the Impugned Order is set aside. However, the respondent no.2 shall be entitled to move a fresh application seeking bail from the learned Trial Court. Such application shall be considered by the learned Trial Court in accordance with law, remaining

VERDICTUM.IN

uninfluenced by any observations made in the Order dated 14.06.2022 granting bail to the respondent no.2.

8. Considering the fact that the respondent no.2 has been on bail since 14.06.2022 and the order is being set aside due to the learned Trial Court failing to comply with the procedure stipulated, it is directed that the respondent no. 2 shall file an application seeking bail, within a period of two weeks from today. Subject to such an application being filed, the respondent no.2 shall not be arrested until an order being passed by the learned Trial Court on such an application. It is reiterated that the question of the extension of the *interim* protection granted by this Court by the present order, shall be at the discretion of the learned Trial Court. On an application being filed by the respondent no.2, it would be for the learned Trial Court to pass appropriate orders thereon.

9. As there is a stay on the further proceedings before the learned Trial Court in the above FIR pursuant to Order dated 06.03.2023, passed in Crl. M.C. 1526/2023, the said Order staying the proceedings will not act as a bar on the learned Trial Court to consider the application filed by the respondent no.2, if any, for seeking bail.

10. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

APRIL 5, 2024/ns/am

Click here to check corrigendum, if any