



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No. 11910/2023

1. Pooja Gurjar
2. Smt. Rekha Gurjar
3. Smt. Narayani Gurjar



-----Petitioners

Versus

State of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Jai Prakash Gupta

For Respondent(s) : Mr. Riyasat Ali, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

27/09/2023

1. The petitioners have filed this application under Section 438 Cr.P.C. having apprehension of their arrest in connection with FIR No.228/2023 registered at Police Station Masuda District Ajmer for offences under Sections 323, 341, 354 and 504 IPC. Presently, investigation is going on for offences under Sections 143, 323, 341, 325, 451 and 308 IPC.

2. Learned counsel for the petitioners submits that the petitioners who are females, have falsely been implicated in this case. They have nothing to do with the alleged incident. He further submits that the petitioner Pooja has a pregnancy of three months whereas the accused petitioner Narayani has a three months old



child. He also contends that cross cases have been registered between the parties. The petitioners are ready to join investigation.

3. Learned Public Prosecutor is directed to procure the latest factual report of the investigation on the next date of hearing. He shall also intimate the injured/victim about this bail application.

4. Till further orders, the petitioners (1) Pooja Gurjar D/o Nandaram Gurjar (2) Smt. Rekha Gurjar W/o Shri Ramkunwar Gurjar and (3) Smt. Narayani Gurjar W/o Shri Yaskaran Gurjar shall not be arrested in connection with FIR No.228/2023 PS Masuda, District Ajmer.

5. At this stage, learned Public Prosecutor has drawn attention of this Court to Standing Order No.32/S.O./2023 dated 15.09.2023 issued by the Office of this Court whereby it was enjoined upon all the concerned that in future, in all matters, arising out of criminal act committed against victim as defined under Section 2(wa) of Cr.P.C. the victim be necessarily impleaded as party respondent.

6. I have gone through the standing order.

7. The aforesaid Standing Order has been passed on the basis of observations made in the order dated 08.08.2023 passed in S.B. Criminal Misc. Bail Application No.9490/2023 : Nitoo Singh @ Nitu Singh vs State of Rajasthan that victim is necessary party in all the bail matters arising out of criminal act committed against the victim. While making aforesaid observation, learned Co-ordinate Bench, has relied upon the Hon'ble Supreme Court Judgment in **Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu & Anr. reported in (2022) 9 SCC 321.** The Hon'ble Supreme



Court in the Jagjeet Singh (supra) has given emphasis on the victim's right to be heard at every step post the occurrence of an offence and therefore, while relying on the said judgment, learned Coordinate Bench has observed as under:-

"4. Evidently, the right of the victim is substantive as well as enforceable and cannot be termed as restrictive. Therefore, in my view, the victim is a necessary party to be added in all the bail matters arising out of criminal act committed against the victim as defined under Section 2(wa) of Cr.P.C. The Court has experienced sometimes, that even the Public Prosecutor does not inform the victim and the victim remains unheard. Once the right of the victim is recognized to participate even at the stage of grant or cancellation of bail, by necessary implication, the victim would be a necessary party even in the bail matters."

8. I have carefully gone through the judgment passed by Hon'ble Apex Court in the case of Jagjeet Singh (supra). The facts of the case reveal that victims therein have been denied a fair and effective hearing at the time of granting bail to the respondent accused. The victims therein joined the proceedings through online but disconnected from the online proceedings and could not make effective submissions. Thereafter, an application seeking rehearing of the bail application was moved but it seems that the same was not considered. The relevant paras are reproduced as below for the sake of ready-reference:-

"26. Adverting to the case at hand, we are constrained to express our disappointment with the manner in which the High Court has failed to acknowledge the right of the victims. It is worth mentioning that, the complainant in FIR No.219 of 2021, as well as the present appellants, are close relatives of the farmers who have lost their lives in the incident dated 03.10.2021. The



specific stance taken by learned Senior Counsel for the Appellants that the Counsel for the 'victims' had got disconnected from the online proceedings and could not make effective submissions before the High Court has not been controverted by the Respondents. Thereafter, an application seeking a rehearing on the ground that the 'victims' could not participate in the proceedings was also moved but it appears that the same was not considered by the High Court while granting bail to the Respondent-Accused.

27. We therefore, answer question (A) in the affirmative, and hold that in the present case, the 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent-Accused."

9. I am in agreement with the observation of learned Coordinate Bench that right of a victim to be heard at every stage of the criminal proceedings, including at the time of grant or cancellation of bail whether it be under Sections 437 or 438 or 439 Cr.P.C. is of utmost importance. The victim must be heard by the Court on his/her appearance either personally or through counsel. Free legal assistance may also be provided to the victim/complainant, if desired by them. The assistance or the submissions offered by a victim would always be considered while dealing with a criminal case. He is the best person who can assist/brief the State Counsel so as to unveil the actual truth and in no way, this right of the victim can be taken away.

10. However, with great respect to the observations made by learned Coordinate Bench in the order dated 08.08.2023, while keeping the judicial discipline, and decorum, I express my disagreement with the observation of the learned Coordinate Bench that the victim is a necessary party to be added in all the



bail matters arising out of criminal act committed against the victim as defined under Section 2(wa) of Cr.P.C. There is a slight difference between important and necessary.

11. Before expressing my disagreement any further, it would be relevant to refer Hon'ble Supreme Court judgment in U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj reported in (2007) 2 SCC 138; (Manu/SC/8775/2006) wherein it was observed as under:-

"26. Judicial Discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."

12. Thus, expressing my disagreement with the view taken by the learned Coordinate Bench, I am of the considered view that the first informant/complainant/victim in proceedings seeking grant of bail under Sections 437, 438 or 439 Cr.P.C. neither can be considered as necessary party nor a proper party. The victims are required to be impleaded as necessary party in the cases where it is mandated by the provisions of Statute. There is no provision in the Criminal Procedure Code which enables a third party to get himself impleaded in the proceedings before the Criminal Court.





Only Section 301 Cr.P.C. enables the private persons to assist the prosecution and to submit written arguments with the leave of the Court. In all prosecutions, the State is the prosecutor and a proceeding is always treated as proceeding between the State and the accused. Once the offence is committed, it is not against the individual but is against the entire society. This Court cannot lose sight of the practical aspect of this issue. In a case where there are many victims, who are to be served in pursuance of the standing order, there would be great difficulty for the State Machinery to get the services affected upon them. The possibility cannot be ruled out that to cause delay in deciding the bail application, the victim may avoid service of the notices.

13. It would be relevant here to refer Supreme Court judgment in the case of Shiv Kumar vs Hukam Chand & Anr. reported in (1999) 7 SCC 467 wherein it was held that fair trial is not only important for complainant/victim's point of view but it is equally important for accused. The Hon'ble Supreme Court has held that:-

"From the scheme of the Code the legislative intention is manifestly clear that prosecution in a sessions court cannot be conducted by any one other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a sessions court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the



accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor. "



14. I therefore, think fit and proper that this issue of necessarily impleadment of complainant/victim as party respondent in all the bail applications whether it be under Section 437, 438 or 439 Cr.P.C., should be decided by a Division Bench or by a Larger Bench. I therefore, direct the Registrar (Judicial), Rajasthan High Court, Jaipur Bench to place the matter before Hon'ble the Chief Justice for constituting an appropriate Bench to decide the following question:-

"Whether in all the bail applications under Sections 437, 438 or 439 Cr.P.C., the complainant/first informant/victim defined under Section 2(wa) of the Cr.P.C. is necessary party and necessarily be impleaded as party respondent?"

15. The file be put up before Hon'ble the Chief Justice for constituting the appropriate bench for authoritative pronouncement on the question formulated above.

(ANIL KUMAR UPMAN),J

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