

GAHC010056552024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : I.A.(Crl.)/270/2024

PRATEEK JAIN
S/O SH. SUNIL KR. JAIN, R/O A-7, SHANTI KUNJ, A BLOCK, VASANTA KUNJ,
SOUTH DELHI-110070.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP BY THE PP ASSAM

2:ADITYA BHATTAR

S/O SRI GANESH PRASAD BHATTAR
R/O- H.NO.3
NEAR RAILWAY GATE NO.7
B.R. PHUKAN BYE LANE
KUMARPARA
GUWAHATI- 781009
KAMRUP (M)
ASSAM

3:SRI GANESH PRASAD BHATTAR
SON OF LATE BHANWARLAL BHATTAR
R/O- H.NO.3
NEAR RAILWAY GATE NO.7
B.R. PHUKAN BYE LANE
KUMARPARA
GUWAHATI- 781009
KAMRUP (M)
ASSAM

4:SMT. BHAWRI DEVI BHATTAR
WIFE OF SRI GANESH PRASAD BHATTAR

R/O- H.NO.3
NEAR RAILWAY GATE NO.7
B.R. PHUKAN BYE LANE
KUMARPARA
GUWAHATI- 781009
KAMRUP (M)
ASSAM

5:SRI NIKITA BHATTAR
WIFE OF SRI ADITYA BHATTAR
R/O- H.NO.3
NEAR RAILWAY GATE NO.7
B.R. PHUKAN BYE LANE
KUMARPARA
GUWAHATI- 781009
KAMRUP (M)
ASSA

Advocate for the Petitioner : MS. RITUPARNA DEVI

Advocate for the Respondent : PP, ASSAM

Linked Case : AB/266/2024

ADITYA BHATTAR AND 3 ORS
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VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P.
ASSAM

Advocate for : MR. D BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

19.03.2024

Heard Mr. N. Saluja, learned counsel appearing for the petitioner assisted by Mr. R. Bawa. Also heard Mr. K.K. Parasar, learned Addl. P.P., Assam appearing for the State respondent and Mr. D. Baruah, learned counsel for the

respondent.

2. This is an application seeking impleadment of the applicant/informant as respondent no. 2 in AB 266/2024.

3. I have heard the submissions made at the Bar.

4. The issue that falls for consideration in this application is whether the informant has a right to be impleaded in an anticipatory bail application.

5. Section-2(wa) of the C.rP.C. defines that the victim means a person who has suffered any loss or injury cause by reason of the act or omission for which the accused person has been charged.

6. The question with regard to the victim's right to be heard at the stage of adjudication of bail application of an accused came up for consideration before the Apex Court in the case of **Jagjeet Singh and Others Vs. Ashish Mishra @ Monu and Another** reported in **(2022) 9 SCC 321**.

7. The Apex Court answered the aforesaid issue as hereunder:-

“23. A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He / She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony.”

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the

time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses."

8. References is also made to the decision of the Hon'ble Bambay High Court in the case of **Chandrakant Chandulal Bhansali V. Shrikant Shrikrishna Joshi** reported in **1992 SCC Online BOM 298** and the Hon'ble Delhi High Court in the case of **Vinay Poddar Vs. State of Maharashtra** reported in **2008 SCC online Bom 1389** and **Saleem Vs. State of (NCT of Delhi)**, reported in **(2023) 3 HCC (DEL) 365**.

9. It appears that the Delhi High Court in the decision of **Saleem Vs. State of (NCT of Delhi)** has recognized that the aforesaid principals laid down by the Apex Court in the case of **Jagjeet Singh (supra)** also applies in the case of anticipatory bail application, as hereunder:-

"33. Upon a conspectus of the foregoing, this Court is persuaded to draw the following conclusions, which it is made clear, are restricted to criminal matters relating to or arising from or concerning sexual offences:

33.1. There is no requirement in law to implead the victim, that is to say, to make the victim a party, to any criminal proceedings, whether instituted by the State or by the accused.

33.2. In accordance with the mandate of the Supreme Court in Jagjit Singh case [Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321 : (2022) 3 SCC (Cri) 560 at paras 22, 23 and 24.2] , a victim now has unbridled participatory rights in all criminal proceedings in relation to which the person is a victim, but that in itself is no reason to implead a victim as a party to any such proceedings, unless otherwise specifically so provided in the statute; Section 439(1-A)CrPC mandates that a victim be heard in proceedings relating to bail, without however requiring that the victim be impleaded as a party to bail petitions.

33.3. In light of the decision of the Supreme Court in Jagjit Singh case [Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321 : (2022) 3 SCC (Cri) 560 at paras 22, 23 and 24.2] , Section 439(1-A)CrPC must now be expanded to include the victim's right to be heard even in petitions where an accused

seeks anticipatory bail; a convict seeks suspension of sentence, parole, furlough, or other such interim relief.

33.4. To obviate any ambiguity, though Section 439(1-A)CrPC makes the "presence of the informant" obligatory at the time of hearing, what is clearly mandated thereby is the right of the victim, whether through the informant or other authorised representative, to be effectively heard in the matter. If necessary, legal-aid counsel may be appointed to assist in representing the victim; and the mere ornamental presence of the victim, or their representative, without affording them an effective right of hearing, would not suffice."

10. It appears from the aforesaid decisions that though the informant earlier had limited right of hearing through the P.P. during consideration of Bail, inroads have been made through judicial precedent, wherein, a participatory role of the informant in the criminal proceedings including in petitions where the accused seeks anticipatory bail, with an opportunity of fair and effective hearing has been recognized.

11. Thus, the informant can participate in such criminal proceeding without being impleaded as a party respondent.

12. As such, no order of impleadment is required in the I.A.

13. Needless to clarify that the informant is at liberty to participate in the connected anticipatory bail application and submit objection, if so desired with advance copy to the other side.

14. With the above observation, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant