

Party Name : ARCHANA DAS ON BEHALF OF ACCD. JIBAN DAS & ORS Vs THE STATE OF TRIPURA

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This application for grant of bail has been filed by the petitioner Smti Archana Das on behalf of four accused namely, Sri Jiban Das, Sri Atal Das, Sri Litan Das and Sri Bishu Das in connection with Santirbazar P.S Case No.32 of 2015 registered under Section 457/376(D)/380/34 of the Indian Penal Code (IPC).

The allegations of the prosecution are that the prosecutrix (name withheld) filed a complaint with the police on 30th June, 2015 to the effect that on the night intervening 29th June, 2015 and 30th June, 2015 at about 12.00 mid night the prosecutrix was alone at home because her husband had been arrested by the police in connection with some other case. According to the prosecutrix the three main accused namely, Jiban Das, Atal Das and Litan Das entered into her dwelling hut at about mid night by forcibly opening the door and thereafter these three accused raped her one by one. According to prosecutrix, 4th accused, Bishu Das stood guard at the door while she was being raped and her son and daughter had witnessed the entire occurrence. She also alleged that fifty thousand rupees which was lying with her was stolen and a gold ornament was also stolen. The prosecutrix was got medically examined and the relevant portion of the report of the medical examiner is as follows:

"Findings of per vaginal examination- There is no evidence of any injuries or inflammation over vulva, external genitalia & groin region. The condition of posterior commissure & fourchette is normal. There are multiple old hymenal tears present over 3 'O' clock, 7 'O' clock & 11 'O' clock position. The vaginal rugosities has been diminished. On internal examination two finger can easily be inserted.

With this above mentioned findings it can be opined that there is no evidence of recent penetration of vagina by a penis or penis like object."

Normally, this Court would be extremely reluctant to grant bail in a case of rape that too a gang rape. However, there are certain distinguishing features of this case. On 28.06.2015 Archana Das who has moved this petition on behalf of the Jiban Das herself had filed a complaint under Section 354 IPC against the husband of the prosecutrix. FIR in this behalf was registered as FIR No.31 of 2015 in the Santirbazar police station. The husband of the prosecutrix was arrested in connection with the said FIR and immediately thereafter this FIR was filed. The prosecutrix and her daughter have supported her version but from the medical evidence on record it is more than apparent that there is no evidence of any penetration. At this stage, it cannot be said with certainty which party telling the truth, but the chance of all the accused being falsely implicated in the matter cannot be ruled out at all. All the four accused have been behind bars since 07.07.2015. The investigation is virtually complete. There is no question of the accused influencing the prosecution witnesses because the prosecution witnesses are the victim herself and her minor children.

Keeping in view the aforesaid observations, the bail application is allowed and all the accused namely, Sri Jiban Das, Sri Atal Das, Sri Litan Das and Sri Bishu Das are ordered to be released on bail on their furnishing bail bond in the sum of Rs.25,000/- (rupees twenty five thousand) each with two sureties in the like amount to the satisfaction of the learned Trial Court undertaking therein:-

- (i) That, the accused persons are directed not to tamper with or in any manner influence the prosecution witnesses;
- (ii) That, the accused persons shall ensure that no threat directly or indirectly is given to any of the prosecution witnesses;
- (iii) The accused persons are further directed not to cause any hindrance in the investigation;
- (iv) The accused persons shall not leave Tripura without permission of the appropriate Court;
- (v) The accused persons shall appear before the trial Court on each and every date of hearing. In case, they absent themselves on any date, then the trial Court shall cancel the bail and the accused persons shall be arrested. Thereafter, the petitioner-accused shall have to approach this Court for grant of bail;
- (vi) The accused persons are directed not to in any manner try to get in touch with the prosecutrix, her husband and her children and in case they even try to get in touch with them telephonically or otherwise and if they violate any of the aforesaid conditions or tries to delay the trial then the prosecution shall be entitled to approach this Court for cancellation of the bail. It has been pointed out to me that the accused persons resided in the same courtyard as the prosecutrix. That cannot be permitted because then the chance of the accused influencing the prosecutrix cannot be ruled out. Therefore, the accused persons may reside at any other place other than the house which has a common courtyard with the prosecutrix.

With these observations, the bail application is disposed of.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.