

Party Name : NIBASH DAS ON BEHALF OF ACCD. SUBHASH DAS Vs THE STATE OF TRIPURA

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. D. Sarkar, learned counsel appearing for the petitioner as well as Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the state.

This is an application under Section 439 of the Cr.P.C. for granting bail in favour of the accused, namely Sri Subhas Das @ Ganga in connection with Budhjung Nagar P.S. Case No.2015 BJN 031 under Section 366(A), added later on under Section 376(1) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

Mr. Debnath, learned Addl. Public Prosecutor has produced the Case Diary for perusal of the court in terms of the order dated 28.10.2015.

The allegations against the accused person is that on 28.07.2015 he had kidnapped the victim (name withheld for protecting her identity) in order to have the illicit sexual intercourse on applying force. It is admitted position that the written ejahar was filed on 01.08.2015 and the accused person is in custody since 01.08.2015.

Mr. Sarkar, learned counsel appearing for the petitioner has submitted that even if it is assumed that the victim is below the consenting age or even if she comes within the definition of "child" in terms of Protection of Children from Sexual Offences Act, 2012, from reading of the statement recorded by the Addl. Chief Judicial Magistrate, West Tripura, Agartala under Section 164(5) of the Cr.P.C., it would be apparent that the victim was having interaction regularly with the accused person and as such the alleged offence was out of juvenile passion. From the other side, Mr. Debnath, learned Addl. Public Prosecutor has submitted that in such heinous case when a child has been subjected to the penetrative sexual offence, the accused may not be shown any leniency by granting bail.

Having appreciated the submissions made by the learned counsel for the parties, this court has scrutinised the Case Diary and come across the medical examination report. After perusing the medical examination report and having regard to the period of detention of the accused person, this court is of the view that this is a case where the accused person may be enlarged on bail.

Accordingly, it is directed that the accused person, namely Sri Subhas Das @ Ganga be allowed to go on bail on furnishing the bail bond of `30,000 (rupees thirty thousand) supported by 2(two) sureties of the like amount. If the records are already transferred to the court of the Special Judge, Protection of Children from Sexual Offences Act, 2012 West Tripura, Agartala, the bail bond be furnished to the Special Judge, Protection of Children from Sexual Offences Act, West Tripura, Agartala, otherwise the bail bond be furnished to the Judicial Magistrate, Court No.7, Agartala, West Tripura. Apart that, the accused person shall report to the Investigating Officer twice in a week for the next 3(three) months and he shall not dissuade any person, seized of any information related with the investigation, and further that he shall not leave his place of residence as recorded in this application without taking prior permission from the concerned court. If any breach is reported, the competent court shall be within his jurisdiction to draw up the proceeding for cancellation of the bail. Since Mr. R.C. Debnath, learned Addl. Public Prosecutor has reported that this case has already been added with Section 4 of the Protection of Children from Sexual Offences Act, 2012, the subsequent orders shall be passed by the Special Judge constituted under the Protection of Children from Sexual Offences Act, 2012 if he has been properly instructed.

With this observation and direction this application stands allowed and disposed of. Case Dairy be returned to Mr. R.C. Debnath, learned Addl. Public Prosecutor.