HIGH COURT OF TRIPURA
AGARTALA

B.A No. 128 of 2020

For Petitioner (s)	:	Mr. P. Rathor, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

17/12/2020

[1] This is an application filed by the petitioner namely Sri Chaijoy Singh Hrangkhawl on behalf of accused namely Sri Biju Hrangkhawl under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C in short) for grant of bail to the accused in connection with Teliamura P.S. case No. 2019 TLM 055 dated 13.08.2019 which has been subsequently renumbered as SPL (POCSO) 9 of 2019 under sections 376 & 419 of the Indian Penal Code (IPC in short) and section 4, POCSO Act, 2012.

[2] Heard Mr. P. Rathor, learned counsel appearing for the petitioner and Mr. R. Datta, learned P.P appearing for the State respondent.

[3] Brief facts of the case are as under.

[4] The petitioner, a student of Class-XI and 17 years of age was boarding in a hostel away from her parents for prosecuting her studies (name of the victim, name of the school and hostel are withheld). While staying in the hostel, she once accompanied one of her

hostel mates to her home at Devtapara on 18.04.2018 where accused petitioner met her and on assurance of marriage had sexual intercourse with her. Few days thereafter the victim conceived. When she informed the petitioner about her pregnancy initially he assured her that he would marry her. After few days he cut off all relations with her. Parents of the victim then took her back from hostel and on 25.03.2019 where she delivered a daughter. After this incident, when the mother of the accused petitioner was contacted over telephone by victim's father, she scolded her father and told him to do whatever he could do. The aggrieved father then reported the matter to police by lodging a written FIR on 04.04.2019. Based on his FIR, Teliamura P.S case No. 055 of 2019 under sections 376 & 419, IPC and section 4 of the POCSO Act, 2012 was registered and investigation was taken up.

[5] During the investigation carried out so far, statement of the victim under section 164(5) Cr.P.C has been recorded, her birth certificate has been seized, DNA profiling of the victim and her daughter has been done at the State Forensic Science Laboratory and other measures with regard to the investigation has been taken. Several raids were conducted in the known address of the petitioner for his arrest but he could not be apprehended. It was known that he absconded immediately after the occurrence was reported to police. Ultimately the investigation team arrested him from his hide out in Bengaluru on 09.11.2020 and after obtaining authorization from the Jurisdictional

Magistrate police produced the accused in the court of learned Special Judge at Khowai on 11.11.2020. The petitioner is in custody since then. Thereafter, a bail petition was moved for the accused before the learned Special Judge at Khowai which was rejected vide. order dated 17.11.2020 passed in case No. Spl. (POCSO) 9 of 2019. Now, the petitioner has moved this court under section 439 Cr.P.C for his release on bail.

[6] Mr. P. Rathor, learned counsel appearing for the petitioner submits that the petitioner and the victim had developed love affairs. Admittedly they had physical relationship as a result of which the victim gave birth to a daughter. Further submission on the defence is that though they have not yet entered into a marital tie, parents of the accused petitioner has accepted the victim and her daughter who are now living with them at their home. According to Mr. Rathor, learned counsel, prolonged detention of the accused petitioner in custody is likely to affect their relationship and spoil their life. Learned counsel urges the court to release the accused on bail considering the interest of the child born to the victim.

[7] Mr. R. Datta, learned P.P vehemently opposes the bail application. It is contended by Mr. Datta, learned P.P that admittedly the accused had committed sexual intercourse with a minor girl which constitutes an offence under the POCSO Act entailing severe punishment irrespective of the consent of the victim. Further

submission of Mr. Datta, learned P.P is that the whole facts and circumstances of the case will reveal that the assurance of marriage was a hoax on the part of the petitioner because immediately after the victim delivered the daughter he left her and hide himself in Bengaluru to avoid police arrest. It is also argued by Mr. Datta, learned P.P that there is every possibility of his fleeing away from the jurisdiction of the court soon after he gets bail. Learned P.P submits that past record of the petitioner is also deplorable because before entering into relationship with the victim he married another woman in 2015. It is finally argued by Mr. Datta, learned P.P that the investigation of the case is in progress and release of the accused at this stage will impair the progress of the investigation. Mr. Datta, learned P.P, therefore, urges the court for rejecting his bail application.

[8] I have perused the case diary and considered the submissions of learned counsel representing the parties. Her birth certificate reveals that the victim was born on 02.05.2002. Therefore, she was a minor when the petitioner had sexual intercourse with her. It has been stated by the victim in her statement recorded under section 164(5) Cr.P.C that in April, 2018 one of her friend introduced her to the petitioner. Thereafter, they had developed love affair and in June, 2018 when she again met her said friend at her house on a day, the petitioner forced her to accompany him to Agartala. After reaching Agartala, he had taken her to someone's quarters at Gorkhabasti where

he forcefully committed rape on her and threatened her not to report the matter to anybody. But, thereafter he never met her. The victim could not even contact him over telephone because his mobile was always kept switched off. Ultimately the victim delivered a daughter on 25.03.2019 as a result of her physical relationship with the petitioner. After the birth of her child her parents contacted the parents of the petitioner who refused to accept her and her child. According to the victim the petitioner has spoiled her life.

[9] Apart from the statement of the victim, the Investigating Officer has also examined some other witnesses who have supported the prosecution case against the accused. The investigating agency has also collected information to the effect that before developing relationship with the victim, the accused married another woman who later moved to Bengaluru. It has also transpired from the investigation that with a view to cut off his relationship with the victim he destroyed the old SIM of his cell phone and took a new number.

[10] The materials placed before this court prima facie support the charge of rape against the accused. The materials collected by investigating agency indicate that the accused despite having a wife entered into physical relationship with the victim who ultimately gave birth to a child. The DNA report of the child and that of the accused petitioner show that the petitioner is her biological father. It is apparent from the birth certificate of the victim that she was a minor when the

accused allegedly committed sexual intercourse with her. Evidently he left the victim and cut off all contact with her soon after she delivered the child.

[11] Keeping in view all these materials available against the accused, this court is of the view that it would not be appropriate to release the accused on bail at this stage of investigation. Resultantly, his bail petition stands rejected. The case is disposed of.

Return back the case diary to learned P.P.

JUDGE

HIGH COURT OF TRIPURA
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