

05.01.2021

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Sws M
Ct. No.05

Rejected

CRM 13 of 2021

In Re : An application for bail under Section 439 of the Code of Criminal Procedure in connection Bishnupur Police Station Case No. 376 dated 24.05.2018 under Section 376/506 of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

And

In the matter of : **Sirajul Gazi @ Kochi Gazi**

..... Petitioner

Mr. Sumanta Chakraborty
Mr. Atanu Ghosh

.... for the Petitioner

Mr. Rana Mukherjee
Ms. Sujata Das

...for the State.

Mr. Chakraborty, learned Counsel, appears in support of this application for bail. This application for bail arises out of Bishnupur Police Station Case No 376 dated 24th May, 2018 under Sections 376/506 of the Indian Penal Code read with Section 6 of the POCSO Act.

It is submitted by learned Counsel for the petitioner by referring to an order of the learned Trial Court dated 16th January, 2020 being order No. 6 that the learned Trial Court was pleased to express the view that since it is the submission of the learned Special PP that the complainant/the father of the victim girl (VG) is dumb, the complainant be examined with the help of an expert. Learned Counsel submits that in view of such statement made by the learned Special PP, the

Investigating Officer (IO) of the case be directed to file a report on the next date.

According to learned Counsel for the petitioner, such report is still awaited by the learned Trial Court. Learned Counsel for the petitioner takes this opportunity, to ventilate the argument that the petitioner has been falsely implicated in this case.

Per contra, Mr. Rana Mukherjee, Learned Additional Public Prosecutor (APP) appearing with Ms. Das, learned Advocate, submits that it would be evident from the statement of the VG under Section 164 of the Cr.P.C. that the petitioner stands sufficiently implicated in this case. It is also submitted by learned APP that the complaint filed by the complainant was recorded by a scribe and such also appears from the Case Diary (CD).

It is submitted by learned APP that the VG being pregnant and, having delivered a child during the pendency of the proceedings, a DNA test has been directed to be placed before the learned Trial Court, which has already been placed and the next date is fixed for hearing on 19th January, 2021.

In the above view of the matter, the State takes the position which, *prima facie*, is correct in the view of this Court, that the materials directly connected with the alleged offence such as the Section 164 statement of the VG read in the light of the transcribed complaint overwhelm the supposed inconsistencies being pointed out by learned Counsel for the petitioner on the ground of the alleged deficiencies on the part of the complainant to lodge a complaint notwithstanding his physical disability.

Having heard the rival submissions and considering the materials placed, this Court is persuaded therefore to reject the application for bail of the petitioner.

Accordingly the prayer for bail stands **rejected**.

CRM 13 of 2021 stands thus **disposed of**.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)

(Subrata Talukdar, J.)