

10-02-2021
subha
Item no.7

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction

C.R.M. No. 103 of 2021
Sk. Asfar Ali
-vs-
The State of West Bengal
(Via video-conference)

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Cossipore Police Station Case No.34 of 2014 dated 1st February, 2014 under sections 341/376(2)(i) IPC and read with Section 6 of the Protection of Children from Sexual Offences Act, 2012(Special ST-03(06)15.

Mr. Deepak Prahladka
Mr. Sarfaraz Hossain

...for the petitioner.

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

... for the State.

Mr. Prahladka, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated and is in custody for 7 years 8 days. Upon completion of investigation, charge sheet has been filed. However, the trial has been delayed beyond reasonable time. Out of 18 witnesses only five witnesses had been examined and as such there is also no possibility of conclusion of the trial in the near future. Deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 21 of the Constitution of India.

Mr. Roy Chowdhury, learned advocate appearing for the State has placed a report dated 18th January, 2021 submitted by the Officer-in-Charge, Cossipore Police Station. Let the same be kept with the record.

He submits that 17th February, 2021 is the next date fixed for examination of CSW 12 and CSW 13 and the witnesses are available. Most of the remaining witnesses are government employees.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is true that there had been a delay towards conclusion of trial. However, the period of delay stands intervened by a period lost due to the pandemic. In such situational circumstances, it cannot be construed that the delay is totally attributable to the opposite party.

The allegation is that the petitioner had sexually assaulted a deaf and dumb child of 15 years. The petitioner was aged of 25 years on the date of the alleged offence. The forensic examination report reveals that sex determination locus was amplified successfully and presence of male DNA was identified. Sexual exploitation and sexual abuse of a child are heinous offences and need to be effectively addressed.

While exercising discretion, the court is required to maintain a balance between the personal liberty and the interest of the society. In a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concern.

Considering the magnitude of offence, its ramifications and the direct involvement of the petitioner in the alleged offence, we are not inclined to grant bail to the petitioner. The prayer for bail is, thus, refused.

However, steps must be taken by the investigating officer, the Public Prosecutor conducting the trial and the learned trial court so that the prosecution evidence can be concluded within a period of three months from the date of communication of this order.

The application for bail being CRM 103 of 2021 is, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

[Tirthankar Ghosh, J]

[Tapabrata Chakraborty, J]