

01.03.2021

Court No.28
rpan / 50

CRM 679 of 2021

(Via video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Sk. Momin Hosain @ Momin Hossain**

- Petitioner

Mr. Tanmoy Chowdhury,

Ms. Ritoprita Ghosh

For the Petitioner.

Mr. Swapan Banerjee,

Mr. Suman De

For the State.

Mr. Abhishek Chakraborty

For the *de facto* complainant.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Haripal Police Station Case No. 301 of 2019 dated 16.12.2019 under Sections 363/365 of the Indian Penal Code [charge-sheet under Sections 363/365/376(2) of the Indian Penal Code, Section 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act].

Learned advocate for the petitioner submits that the marriage between the petitioner and the victim was solemnized but not accepted by the parents of the victim girl and as such, the present case was initiated. Learned advocate further submits that at the time when the marriage was solemnized, the victim was below the age of 18 years and as such, the case has been initiated amongst other Sections including POCSO Act. Learned advocate further submits that a child was born out of the said wedlock and the

victim had before the learned Magistrate expressed her intention to go to her husband.

Mr. De, learned advocate appearing for the State draws the attention of this Court to the statement of the victim, recorded under Section 164 of the Code of Criminal Procedure.

Learned advocate for the *de facto* complainant is also present and has expressed the intention of the complainant, who is not willing to pursue the allegations.

On an appreciation of the circumstances under which this Court has been called upon to adjudicate the issue, we are of the opinion that the circumstances are exceptional, as there is a child and there is also relationship existing between the petitioner and the victim and the intention of the victim to carry forward her conjugal life. Having regard to the same, we are of the opinion that custodial detention of the petitioner may not be warranted in the facts and circumstances of the instant case.

Accordingly, we direct that the petitioner, namely, **Sk. Momin Hosain @ Momin Hossain**, shall be released on bail upon furnishing a bond of ₹10,000/- with two registered sureties of like amount each, to the satisfaction of the learned Additional Sessions Judge, Chandernagore, Hooghly.

The application for bail, being CRM No. 679 of 2021, is 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)