

04.03.2021
Mithun
Sl. No.01
D/L.
Ct.No.30.

CRM/2321/ 2021

In Ref: An application for bail under Section 439 of the Code of Criminal Procedure, 1973. An order dated 09.02.2021 passed by the learned Judge, Special Court under Protection of Children from Sexual Offences Act cum Learned Court Additional Sessions' Judge, 2nd Court, Howrah in connection with Special T.R.Case No.85 of 2020 arising out of Howrah Police Station Case No.304 of 2020 dated 21.09.2020 under Section 8 of the Protection of Children from Sexual Offences Act.

In the matter of : Sunny Hela @ Suni

...the petitioner.

Mr. Mrityunjoy Chatterjee, Adv.,
Mr. A. Debnath, Adv.

... for the petitioner.

Smt. Zareen Khan, Adv.
Smt. Sreeparna Das, Adv.

...for the State.

Having heard the learned Advocate for the petitioner and the learned P.P.-in-Charge it is ascertained that in connection with Howrah P.S. Case No.304 of 2020, charge-sheet has been submitted against the petitioner under Section 8 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the 'said Act' in short).

It is submitted by the learned Advocate for the petitioner that for the offence punishable under Section 8 of the said Act shall not be less than 3 years, which may extend to 5 years. The accused is in custody for about 52 days. Charge-sheet has already been submitted in this case. Therefore, he should be released on bail pending trial of the case.

Learned Advocate for the State, on the other hand, submits that in Paragraph 5 of the application for bail, the petitioner unequivocally stated that he and the victim are within family relationship. In view of such relationship and having committed the offence as described in the F.I.R., accused should be prima facie held committing offence under Section 5(n) of the said Act, punishable under Section 6 of the said Act.

Section 5 of the said Act deals with aggravated penetrative sexual assault. A penetrative sexual assault becomes aggravated when it is done by a class of person/persons mentioned in Section 5(a) to 5(u) of the said Act.

On perusal of the F.I.R. it is ascertained that no allegation of penetrative sexual assault was made by the de-facto complainant. The allegation against the petitioner is that he touched the private part of the victim. Mere touch of private part of the victim with sexual intent is defined as sexual assault under Section 7 of the Act, which is punishable under Section 8 of the said Act.

Considering the fact that charge sheet has already been submitted and he is in custody for 52 days, I am inclined to release the petitioner on bail.

The petitioner may find bail of Rs.10,000/- with two sureties of like amount to the satisfaction of the learned Special Judge, POCSO, Howrah with further condition that if on bail, he must be personally present on each and every date of trial in the Trial Court, failing which, the order of bail shall be cancelled without further reference to this Bench.

(Bibek Chaudhuri, J)