

01.06.2021

Court No.28

rpan / **20**

CRM 2656 of 2021

(Via video Conference)

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

And

In Re : **Avirup Chowdhury @ Abhiroop Chowdhury**
Petitioner.

Mr. Rajdeep Majumdar,

Ms. Arushi Rathore,

Mr. Moyukh Mukherjee

... for the Petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,

Mr. Neguive Ahmed,

Md. Anwar Hossain

... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Panskura Police Station Case No.35 of 2021 dated 18.01.2021 under Section 376D of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

Mr. Majumdar, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. The *de facto* complainant is a transgender and the complaint was lodged about 15 days after the alleged incident. From the materials on record it would be explicit that upon ossification test it was found that the petitioner's age was in between 18 and 20 years, as on 4th March, 2021. The fact that the petitioner was major would also be explicit from the electoral roll, as annexed to the application at page 61. Upon medical examination, it was

observed that there is no sign of any injury on the body and the private parts of the *de facto* complainant.

He further submits that the petitioner is presently suffering from pancreatitis and is being treated in jail hospital. In support of such contention, he has drawn our attention to the medical documents, as annexed to the application. Upon completion of investigation charge sheet has already been submitted and as such, further detention of the petitioner, who is in custody since 26th January, 2021, is not necessary.

Mr. Ahmed learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the statement of the *de facto* complainant, as recorded under Section 164 of the Code and the medical report.

He further submits that it would be explicit from the statement of the *de facto* complainant, as recorded under Section 164 of the Code that she was given cold drinks on the date of the alleged incident.

We have heard the learned advocates appearing for the respective parties and have considered the materials in the case diary. *Prima facie*, there are materials which disclose the direct involvement of the petitioner in the alleged offence. Considering the gravity of the offence, the nature of allegations, the medical report and the extent of complicity of the petitioner in the alleged offence, we are not inclined to exercise any discretion in his favour. As such, his prayer for bail is refused at this stage.

The application for bail, being CRM No.2656 of 2021, is dismissed.

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

(Shampa Sarkar, J.)

(Tapabrata Chakraborty, J.)