

CRM 3455 of 2021
(Through Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with New Barrackpore Police Station Case No. 96 of 2015 dated June 17, 2015 under Sections 326/377 of the Indian Penal Code and 12 of POCSO Act.

And

In the matter of: Nityananda Mondal

.... Petitioner

Mr. Debasis Kar

... For the Petitioner

Mr. Tanmoy Kr. Ghosh,
Mr. Arindam Sen.

... For the State

Mr. Debasis Kar, learned counsel for the petitioner submits that the petitioner is incarcerated in jail since his surrender on 30.03.2021 before the trial court pursuant to warrant of arrest issued on 4th December, 2019. It is submitted that the petitioner was admitted on bail by the learned Special Judge, POCSO Act on 6th July, 2015 and he was attending Court but due to communication gap, he could not appear on the date when the warrant of arrest was issued.

Heard Mr. Tanmoy Kr. Ghosh learned counsel for the State who has pressed in service the case diary to impress upon the nature of offence.

The order sheets dated 15th March, 2017 and 25/04/2017 reflect that the petitioner was present before the court but since the learned Public Prosecutor-in-Charge had not taken any step, the case was adjourned. On 27th May, 2018, the petitioner was found absent

without any step and for the reason stated in the order sheet, the petitioner could not attend the court and was absent without any step which resulted in issuance of warrant of arrest against him and such order was recorded by the trial court on 29th July, 2019 but warrant of arrest was not issued pursuant to that order, rather it was issued on 6th December, 2019 vide process being P-4212 as depicted from order dated 4th December, 2019. It also appears that the said process of W.P was recalled by order dated 3rd March, 2021 and fresh W.P was issued by process no. 4421 dated 8th March, 2021. Pursuant thereto, the petitioner having come to know of issuance of warrant of arrest against him, has surrendered before the trial court on 30th March, 2021.

Learned counsel for the petitioner further submits that the petitioner could not attend the court on the date fixed due to communication gap. The order sheet reveals that learned advocate engaged by the petitioner perhaps, could not take any step for representation of the petitioner/accused in absence of the latter.

It is desired that when an advocate-on-record is appointed, it is his legal and moral duty towards his client to take step before the trial court by filing an application under Section 317 of the Code of Criminal Procedure. It appears that coercive measure by issuance of arrest was abruptly taken on 8th March, 2021 against the accused/petitioner without direction to the surety to produce. The learned trial court did not even take steps to take recourse under Section 446 of the Code of Criminal Procedure against the surety. It appears to us that having come to know about the process of warrant, the petitioner on his own surrendered before the court.

Learned counsel for the State submits that the petitioner has misused the bail privilege.

We are of the view that the petitioner voluntarily surrendered before the trial court and for the reason stated above, we are inclined to admit the petitioner on bail. Accordingly, the petitioner may be released on bail upon furnishing a bond of Rs.5,000/- (Rupees Five Thousand only), with two sureties of like amount subject to the satisfaction of the learned Special Court, Barrackpore and with the direction that the petitioner would attend the court on every date of the trial.

It is expedient on the part of the trial court to conclude trial of such offences in a summary manner as per the provision of the POCSO Act. Therefore, the learned trial court will undertake the trial as expeditiously as possible after the resumption of the normal functioning of the court.

Accordingly, the application being C.R.M. 3455 of 2021 is allowed and disposed of.

(Saugata Bhattacharyya, J.)

(Shivakant Prasad, J.)