

25.08.2021

Court No.28
Item No.9
(REJECTED)

Ab

CRM 4291 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on 31.05.2021 in connection with Duttapukur Police Station Case No. 3 of 2020 dated 01.02.2020 under Sections 450/427/376D of the Indian Penal Code;

And

In the matter of : **Sougata Sarkar.**

...Petitioner.

Mr. Sandip Chakraborty,
Mr. Tirtheswar Das,
Mr. Kaustav Das.

...For the Petitioner

Mr. Madhusudan Sur,
Mr. Dipankar Pramanick.

... For the State.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with Duttapukur Police Station Case No. 3 of 2020 dated 01.02.2020 under Sections 450/427/376D of the Indian Penal Code.

Learned Advocate for the petitioner seeks bail on the ground that the petitioner is in custody for more than 600 days. It is further submitted that there are no incriminating materials found against the petitioner nor he is directly involved in commission of rape and yet he is subjected to the rigor of the provisions of law.

Learned Advocate for the State opposes the prayer for bail and submits that there are materials against the petitioner and no leniency can be shown to him.

We had an occasion to peruse the certified copy of the order being S.C. 88 of 2020. The earlier application for bail filed by the petitioner was rejected nearly one year ago on the finding that the

materials found against the petitioner during investigation do not inspire the confidence of the learned Judge to accept the prayer for bail. It further appears from the orders passed therein that a date was fixed for framing of charges in terms of the order of the High Court passed in an earlier application, but on that date the petitioner took out an application under Section 227 of the Code of Criminal Procedure seeking discharge as there are no incriminating materials found against him. The said application was taken up after affording an opportunity of hearing to the petitioner, who was represented through his Counsel and the learned Judge has categorically recorded the finding after consulting the record that there are incriminating materials found against the petitioner, if proved at the time of trial may be proved to his guilt. Accordingly, said application was dismissed.

It appears that the petitioner subsequently filed an application under Section 408 of the Code of Criminal Procedure seeking transfer of the case, which is still pending. The order passed in the application under Section 227 of the Code of Criminal Procedure still stands and the finding recorded therein binds the petitioner unless it is set aside by the higher forum.

It is sought to be projected before us that there are no materials found against the petitioner and simply he was shown to have been present at the time of alleged commission of offence, but from the statement of the victim lady recorded under Section 164 of the Code of Criminal Procedure, the role attributable to the conduct of the petitioner cannot appear to be less grievous than the perpetrator.

Since serious allegation of rape has been made and charge-sheet has already been submitted but because of the aforesaid circumstances, as indicated above, the charges could not be framed, we think that it is the duty of the concerned Court not to be deterred with the conduct and behavior of the litigant before it but must uphold the rule of law and should embark a journey in quest of truth.

There is no order putting fetter on the carriage of the proceeding pending before the learned Additional Sessions Judge, Fast Track Court-1, South 24-Parganas at Barasat in the application under Section 408 of the Code of Criminal Procedure.

We, thus, request the learned Judge to fix a date for framing of charges, which should not be beyond fifteen days from the date of communication of this order unless there is any fetter put by the learned District and Sessions Judge in a proceeding pending before it and shall thereafter proceed to frame the charges. The learned Judge shall also take endeavour to expedite the trial of the case.

The application for bail being CRM 4291 of 2021 is **rejected**.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)