

17.11.2021

Court No.28
Item No.63
(REJECTED)

Saswata

CRM 5287 of 2021

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Bhangore Police Station Case No. 178 of 2021 dated 12.04.2021 under Section 4 of the POCSO Act and Section 376 AB of the IPC;

And

In the matter of : **Sarat Mondal**

...Petitioner

Mr. Angshuman Chakraborty

Mr. S. S. Saha

...For the Petitioner

Mr. Tanmoy Kumar Ghosh

Mr. Arindam Sen

... For the State

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure in connection with Bhangore Police Station Case No. 178 of 2021 under Section 4 of the POCSO Act and Section 376 AB of the IPC.

Learned advocate for the petitioner submits that due to the political rivalry, the petitioner has been implicated in connection with the instant case. Despite the fact there is no semblance of truth in the allegation made in the FIR.

It is further submitted that there has been a delay of 12 days in registering the FIR from the date of the alleged incident.

The learned advocate for the State opposes the prayer for bail. It is submitted that the victim girl of 10 years 8 months had vividly narrated the incident and such statement constitute an offence under the POCSO Act.

To counter the aforesaid submission, the learned advocate for the petitioner submits that the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure does not disclose offence under Section 4 of the POCSO and since the charge sheet has been submitted under the aforesaid provision, it is a fit case where the petitioner should be enlarged on bail.

After hearing respective counsels and on perusal of the materials on

record including the statement of the minor victim girl, we find an element of offence under the POCSO Act, provided such statement withstands at the time of trial. It is immaterial that the charging section has been wrongly shown as at the time of framing the charge, the Court will take care of the statements and the materials unearthed during the investigation and there is no fetter on the part of the Court to amend the charging sections in commensurate with the materials found during the investigation. That itself cannot be a ground to allow the application for bail.

Considering the gravity of the statement of the minor victim girl, attributable to the conduct of the petitioner, we do not think that it is a fit case where the petitioner should be enlarged on bail.

The prayer for bail is, thus, ***rejected*** at this stage.

The application for bail being CRM 5287 of 2021 is accordingly ***dismissed.***

(Harish Tandon, J)

(Rabindranath Samanta,J.)