

17.11.2021

CRM 5510 of 2021

Court no. : 28
Item no. : PB-09
Matter : 439
Status : ALLOWED
Transcriber: nandy

In Re: An application for **Bail** under Section **439** of the Code of Criminal Procedure filed on 13.08.2021 in connection with Baishnabnagar Police Station Case No. 172 of 2019 dated 10.04.2019 under Sections 325/366/420/34 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act.

and

In the matter of: **Fitu Mondal @ Pitu Mandal @ Akash Mandal**

..... Petitioner

Mr. Kalidas Saha, Advocate

.....for the Petitioner

Ms. Zareen N. Khan, Advocate

Mr. Ashok Das, Advocate

..... for the State

The petitioner has filed the instant application for bail in connection with Baishnabnagar Police Station Case No. 172 of 2019 dated 10.04.2019 under Sections 325/366/420/34 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act.

The instant application for bail is taken out under peculiar circumstances. The earlier application for anticipatory bail being CRM 5976 of 2020 filed by the petitioner was allowed on August 28, 2020. However, the name of the petitioner appearing in the said petition and in the order, was wrongly shown as Pintu Mondal @ Akash instead of Fitu Mandal @ Pitu Mandal @ Akash Mandal and because of such reason, the petitioner could not avail the benefit under Section 438 of the Code of Criminal Procedure. Subsequently, the petitioner surrendered before the Special Court and is languishing in jail for nearly 147 days.

Our attention is drawn to the finding recorded in the order dated August 28, 2020 passed in CRM 5976 of 2020 that there was some kind of relationship between the petitioner and the victim girl

and for such reason the custodial interrogation of the petitioner is not required.

However, the learned Advocate for the State opposes the prayer for bail with the contention that the petitioner ought to have taken prompt steps, the moment such discrepancy surfaced and because of the delay the Court should not extend the benefit under Section 439 of the Code.

Be that at it may, once the Court has found the plausible reason for granting anticipatory bail and later on the petitioner surrendered before the Special Court, the findings made by the coordinate Bench does not erase nor wished away by a subsequent act of surrender and the apprehension of the petitioner in custody. Furthermore, chargesheet has already been filed by the Investigating Officer. We thus find it a fit case for granting bail to the petitioner.

As such, the prayer for bail is **allowed**.

Accordingly, the petitioner shall be released on bail on the following conditions:-

- i) The petitioner shall furnish a bond of Rs.10,000/-, with two sureties of Rs.5,000/- each, one of whom must be local, to the satisfaction of the learned Second Additional District Judge, Special Court, Malda;
- ii) The petitioner shall attend the Court case on each and every date so fixed by the trial Court;
- iii) The petitioner shall not tamper with the evidence and shall not intimidate the witnesses in any manner whatsoever;
- iv) Failure to attend the Court on a solitary day without any justifiable reason shall disentitle the petitioner the privilege of

bail and the trial Court would be at liberty to cancel the bail without any reference to this Court.

The application being **CRM 5510 of 2021** accordingly **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)