

08.12.2021
Court No.32
Item No. 174
Avijit Mitra

C.R.M. 6707 of 2021 (via video conferencing)

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

And

In Re : Bijali Kumar Biswas

Petitioner

Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Sayantak Das,
Mr. Arif Ali

For the Petitioner

Mr. Prasun Kumar Datta,
Mr. Nirupam Dhali

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Bhimpur Police Station Case No. 217 of 2020 dated 18.09.2020 under sections 376/120B of the Indian Penal Code.

Mr. Ganguly, learned senior advocate appearing for the petitioner submits that the petitioner is the stepfather of the victim and is presently aged about 68 years. He is suffering incarceration for about 445 days. He has been falsely implicated on the basis of unfounded allegations which would come to light from the deposition of the victim in course of trial. Such deposition is contradictory to her statement as recorded under Section 164 of the Code. The petitioner's prayer for bail was rejected by this Court twice earlier on 10th December, 2020 and on 30th August, 2021 and by the learned Special Court on 23rd September, 2021

primarily on the basis of the victim's statement as recorded under Section 164 of the Code. The deposition of the victim has been brought on record by way of a supplementary affidavit. Let the same be kept on record. A copy of the same has been handed over to Mr. Datta, learned advocate appearing for the State.

Mr. Ganguly further submits that the victim is a married lady and she is residing at her matrimonial house in the village of Omurpur, District-Murshidabad.

Mr. Datta, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary including the statement of the victim girl, as recorded under Section 164 of the Code. According to him the petitioner's prayer needs to be rejected in view of the seriousness of the offence.

A perusal of the deposition of the victim girl reveals that she refused medical and that she lodged the complaint as per the neighbour's instruction. Such deposition does not corroborate her statements, as recorded under Section 164 of the Code. Upon a cumulative assessment of the materials on record, we are of the opinion that further detention of the petitioner is not warranted, more so when, *prima facie*, there is no likelihood that the petitioner, being a person of 68 years, would flee from justice or would delay the trial by abscondence.

Accordingly, we allow this application and direct that the petitioner, namely, **Bijali Kumar Biswas**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like

amount each, one of whom must be a local, to the satisfaction of the learned Chief Judicial Magistrate, Krishnagar, Nadia with a further condition that without the leave of the learned Court below, the petitioner shall not leave the jurisdiction of Bhimpur Police Station, District Nadia save and except for attending the learned Court below on all the dates, as specified for hearing and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 6707 of 2021, is disposed of.

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

(Sugato Majumdar, J)

(Tapabrata Chakraborty, J)