

5 29.10.2021
MNS Ct. No.8
& AD
(Rejected)

C.R.M. 6892 of 2021
(Via Video Conference)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on **25/10/2021** in connection with **Chandrakona** P.S. Case No. **318 of 2020** dated **30/10/2020** under Sections **363/376(2)(i)** of the Indian Penal Code, 1860 read with Section **4** of the Protection of Children from Sexual Offences Act, 2012.

And

In the matter of: Kusha Das

....petitioner.

Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Das

...for the petitioner.

Mr. Swapan Banerjee,
Mr. Suman De

...for the State.

Learned counsel for the petitioner contends that the materials on record do not tally with the allegation of the victim girl at all, insofar as the victim girl specifically alleged that her vagina was penetrated, occasioning blood-shed. However, in the medical report, it is clearly stated that she had no external injury, as well as no sign of sexual intercourse as the hymen of the victim girl was intact.

It is further submitted that the petitioner is languishing behind the bars for around 312 days. As the charge sheet has already been filed, learned counsel submits that the circumstances have changed subsequent to the earlier application for bail being not pressed by the petitioner in the month of August, 2021.

Learned counsel appearing for the State categorically opposes such contentions and places reliance on the statement made by the victim girl under Section 164 of the Code of Criminal Procedure.

Upon considering the materials, we find that although there

might be discrepancies apparent on the face of the record, in respect of some of the allegations against the accused, the other component of Section 4 of the Protection of Children from Sexual Offences Act, 2012, that is, penetration in the mouth, still remains, more so in view of the categorical statements of the victim girl under Section 164 of the Code of Criminal Procedure, which apparently could not have been manufactured or imagined by a nine year old girl. However, we cannot go into any final adjudication on such question, since findings either way may influence the trial when it begins. However, for the *prima facie* case, in respect of entitlement of the petitioner to be enlarged on bail, we are not convinced that the petitioner should be enlarged on bail at this premature stage.

We should also keep in mind the provisions of Section 29 of the Protection of Children from Sexual Offences Act, 2012, which cast a reverse burden on the accused to prove his innocence.

Accordingly, C.R.M. 6892 of 2021 is dismissed.

It is, however, made clear that the merits of the matter, which would be the subject-matter of the trial, have not been gone into by this Court.

(Sabyasachi Bhattacharyya, J.)

(Aniruddha Roy, J.)