

C.R.M. 6958 of 2021

In Re : An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Sonarpur P.S. Case No.259 / 2021 dated 14.04.2021 under sections 363/365/366 of Indian Penal Code read with Section 6 of POCSO Act, 2012 read with Section 9 of Child Marriage Restrain Act.

And

In the matter of : Prafulla Malik

...Petitioner.

Mr. Somnath Mukherjee,
Mr. Mainak Naskar

... for Petitioner.

Mr. Bidyut Kumar Ray,
Ms. Sutapa Banerjee

...for State.

The application for bail is prayed for on the ground that in the statement under Section 164 of the Code of Criminal Procedure, the victim girl has stated that she has voluntarily left her house with the petitioner and has accompanied him.

It further appears that she has specifically stated that the petitioner should not be in any way punished.

The learned Counsel for the State, however, relies upon the statement made under Section 161 of the Code of Criminal Procedure where the victim girl has stated exactly to the contrary.

It is now well settled that more weightage is given to the statement made under Section 164 since the same is made before a

Magistrate.

This Court, however, notes that the victim girl was only slightly above 13 years of age at the time when the offence was committed and the petitioner was about 23 years of age. The petitioner ought to have been conscious of the immaturity of the victim girl.

Hence, notwithstanding the statement made by the victim girl under Section 164 of the Code of Criminal Procedure, this Court is not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail is rejected. However, the concerned Court below shall ensure expeditious disposal of the trial preferably within a period of ten months from the date of communication of this order. In default, the petitioner shall be entitled to pray for bail.

C.R.M. 6958 of 2021 is rejected.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Rajasekhar Mantha , J.)

(Kesang Doma Bhutia, J.)