

22.11.2021

Court No.28
Item No.18
(REJECTED)

Saswata

CRM 7442 of 2021

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Bidhannagar East Police Station Case No. 61 of 2018 dated 10.07.2018 under Section 376 (2) (i) of the Indian Penal Code and Section 6 (i)(II) of the POCSO Act;
And

In the matter of : **Himansu Patra**

...Petitioner

Mr. Anghsuman Chakraborty
Mr. Shashanka Shekhar Saha

...For the Petitioner

Ms. Z.N.Khan
Mr. Ashok Das

... For the State

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure in connection with Bidhannagar East Police Station Case No. 61 of 2018 under Section 376 (2) (i) of the Indian Penal Code and Section 6 (i)(II) of the POCSO Act.

The learned advocate for the petitioner submits that the petitioner is in custody for last three and a half years without any reason and rhyme simply on the statement of the minor victim girl. He further submits that the DNA test, so conducted does not reveal the petitioner as biological father of the child of the victim girl and, therefore, the petitioner is entitled to be released on bail. It is further submitted that the victim girl disclosed the alleged facts in the FIR, which is substantially different from when her statement is recorded under Section 164 of the Code of Criminal Procedure and because of such variations, the petitioner should be enlarged on bail.

Learned advocate for the State opposes the prayer for bail.

It is submitted that even it is found that the petitioner is not the biological father, but it does not diminish the commission of an

offence under the POCSO Act. There is an incriminating material found against the petitioner and, therefore, the prayer for bail of the petitioner should be rejected.

After hearing respective submission and on perusal of the materials on record including the statement of the minor victim girl as well as the report of the DNA test, though it is found that the petitioner is not the biological father of the child and the other co accused had found to be the biological father, but the statement of the minor victim girl recorded under Section 164 of the Code, vividly narrated the incident. Simply because the petitioner was not found to be the biological father of the child, does not absolve him from any offence committed jointly with the other co accused.

We, thus, do not find that it is a fit case where the petitioner should be enlarged on bail.

Accordingly, the prayer for bail of the petitioner is ***rejected***

At this stage, we are informed that out of 15 charge sheeted witnesses, 12 witnesses have been examined. We, therefore, request the Learned Judge, Special Court under the POCSO Act to expedite the trial of the case and bring it to its logical conclusion within 6 months from the date of communication of this order.

The application for bail being CRM 7442 of 2021 is accordingly ***dismissed.***

(Harish Tandon, J)

(Rabindranath Samanta,J.)