

12.08.2021

Court No.28
Item No.14

Akd
&
As

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT
JALPAIGURI

CRM 811 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Dhupguri Police Station Case No. 313 of 2020 dated 02.09.2020 under Sections 376DA of the Indian Penal Code read with Section 6 of Prevention of Children from Sexual Offences Act, 2012 (POCSO Case No. 89 of 2020);

And

In the matter of : **Khursid Alam @ Khursidul Alam & Anr.**
...Petitioners

Mr. Jaydeep Kanta Bhowmik

...For the Petitioners

Mr. Niloy Chakraborty,
Mr. Biswarup Roy.

...For the State.

The Advocate on Record of the petitioners undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking the application is taken up for hearing.

Taking advantage of the observations recorded by the Co-ordinate Bench in CRM 3676 of 2020 dated 11th June, 2020, the petitioners sought for a leave to file supplementary affidavit to annex certain documents, more particularly the medical examination report in the instant case. It is no gainsaying that the findings on the basis of the facts recorded by the Co-ordinate Bench is restricted to the said particular case and cannot be generalized as a ratio of law so as to bind another Co-ordinate Bench. The Court after recording the statements of the petitioners in the said order did not return specific finding thereupon and, therefore, such decision has no binding efficacy on the later Co-ordinate Bench.

The Special Act, i.e. Prevention of Children from Sexual Offences Act has imbibe within itself various eventualities to sexual assault upon a minor and in view of the expanded definition of 'sexual assault', such general observation does not enure the benefit to the petitioner. The victim girl has vividly narrated the incident in

her statement recorded under Section 164 of the Code of Criminal Procedure and on perusal thereof, the earlier Co-ordinate Bench refused the prayer for bail to the petitioners. Since then we do not find any changed circumstances warranting different decision to be taken in the instant application.

The prayer for bail of the petitioners is thus rejected.

CRM 811 of 2021 is accordingly **dismissed**.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)