

30.09.2021
Court No.01
Item No. 31
Krishnendu
Bail Granted

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

(Via Video Conference)

C.R.M. 993 of 2021

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

And

In Re : **Bhim Sarkar**

....Petitioner

Mr. Kunaljit Bhattacharjee
Ms. Alo Das

... For the Petitioner

Mr. Arun Kumar Sarkar
Mr. Tapan Bhattacharjee

... For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Haldibari P.S. Case No. 192 of 2021 dated 20.08.2021 under section 8 of the POCSO Act, 2012.

Mr. Bhattacharjee, learned advocate appearing for the petitioner, submits that the petitioner is not involved in the alleged incident, which occurred on 19th August, 2021. Surprisingly, he was arrested on 23rd August, 2021. The name of the petitioner does not feature in the complaint.

Drawing the attention of this Court to the forwarding report, as annexed to the present application, Mr. Bhattacharjee further submits that the petitioner was arrested since during the medical examination the victim girl stated before the attending doctor that “*she is engaged with one Bhim (Vim) Sarkar with whom she had sexual relations earlier*”. The petitioner has been illegally arrested

and has already suffered incarceration for a period of one month. In the said conspectus, the petitioner may be enlarged on bail on any condition.

Mr. Sarkar, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the medical report and the statement of the victim girl, as recorded under section 164 of the Code of Criminal Procedure. He submits that the investigation is still in progress.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

In the complaint lodged by the mother of the victim girl, the name of the petitioner does not feature. In the statement of the victim girl, as recorded under section 164 of the Code of Criminal Procedure, there is no allegation against the petitioner. It appears that he has been taken into custody only on the basis of the statement of the victim girl, as recorded during her medical examination. In the medical report, the opinion of the doctor was that "*I cannot opine whether she was sexually assaulted or not*".

In view thereof, we are of the opinion that further detention of the petitioner, who has already suffered incarceration for about a month, is not warranted.

Accordingly, we allow this application and direct that the petitioner, namely, **Bhim Sarkar**, 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 local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Mekhliganj, Cooch Behar and

on further condition that the petitioner shall not enter the jurisdiction of Haldibari Police Station, save and except for meeting with the Investigating Officer once a fortnight on and from 4th October, 2021 until further orders.

The petitioner shall immediately intimate the address, where he would be residing, to the Investigating Officer of the case.

The application for bail, being C.R.M. 993 of 2021, is, thus, disposed of.

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

(Abhijit Gangopadhyay, J.) (Tapabrata Chakraborty, J.)