

21.02.2022

Item No.34

Court No.32

ss

C.R.M. (DB) 110 of 2022

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

And

In Re: Biswanath Bairagi

... Petitioner.

Mr. Kallol Kumar Basu

Md. Jannat Ul Jirdous

Mr. Rajesh Naskar

Ms. Tithi Majumdar

... for the Petitioner.

Mr. Saswata Gopal Mukherji, Ld. P.P.

Mr. Partha Pratim Das

Mrs. Manasi Roy

... for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Dholahat P.S. Case No. 330 of 2021 dated 27.08.2020 under Sections 363/365/376 of the Indian Penal Code and Section 6 of the POCSO Act and Section 9 of Prohibition of Child Marriage Act.

Mr. Kallol Kumar Basu, learned Advocate appearing for the petitioner submits that the petitioner had a love relationship with the victim. She was being tortured by her parents and the petitioner was ready and willing to marry her. At the said juncture, the victim was about 17 years 4 months old whereas the petitioner was about 20 years old. He has already suffered long incarceration for about 178 days and as such, further detention of the petitioner may not be necessary more so, upon completion of investigation, charge-sheet has been submitted.

Mrs. Manasi Roy, learned Advocate appearing on behalf of the State opposes the petitioner's prayer and draws our attention to the statement of the victim as recorded under Sections 161 and 164 of the Code. Answering to our query, she submits that the victim refused medical.

Prima facie, there are inconsistencies between the statement of the victim lady, as recorded under Section 161 and as recorded under Section 164 of the Code. It further appears that the victim lady refused medical examination. In view thereof and considering the nature of accusations and the possible extent of complicity of the petitioner in the alleged offence, we are of the opinion that his further detention is not necessary more so when upon completion of investigation, charge-sheet has been submitted.

Accordingly, we allow this application and direct that the petitioner, namely, **Biswanath Bairagi**, 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 a local, to the satisfaction of the Learned Additional Sessions Judge, 1st Court and Special Court under POCSO Act, Kakdwip, South 24-Parganas.

The petitioner shall attend the learned Court below on all the dates, as specified for hearing and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM (DB) 110 of 2022, is disposed of.

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

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)