

CRM (DB) 261 of 2022
(via video conference)

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

In the matter of : **Mokarab Hossain @ Arabul**
..... petitioner

Mr. Samrat Chaudhury
Ms. Ankita Das Chakraborty
Mr. Sagnik Mukherjee
Ms. Ujjayani Banerjee

.....For the petitioner

Mr. Saswata Gopal Mukherji, Ld. PP
Ms. Faria Hossain
Mr. Aniket Mitra

.....For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Kashipur PS Case No. 532 of 2021 dated 1st December, 2021 under Sections 376/417 of the Indian Penal Code.

Mr. Chaudhury, learned advocate appearing for the petitioner submits that there was consensual relationship between the petitioner and the victim lady and they used to reside as husband and wife and out of such relationship, a child was born. However, their marriage was not registered. Both the petitioner and the victim lady are adult. The victim lady was also conscious about the consequences of her relationship with the petitioner. The allegations levelled against the petitioner are unfounded and he has already suffered incarceration for about 95 days. In view thereof,

further detention of the petitioner may not be necessary and he may be enlarged on bail on any stringent condition.

Mr. Mitra, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the statement of the witnesses, including the statement of the victim lady, as recorded under Section 164 of the Code.

Prima facie, it appears that there was a consensual relationship between the petitioner and the victim lady, who had also given birth to a child. Whether such relationship was actuate with any dishonest intention since its inception, is a matter to be decided at the appropriate stage of the trial, in accordance with law. Considering the possible extent of complicity of the petitioner in the alleged offence and the period of detention already suffered, we are of the opinion that his further detention is not necessary.

Accordingly, we allow this application and direct that the petitioner, namely, **Mokarab Hossain @ Arabul**, 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 Chief Judicial Magistrate, Baruipur, South 24 Parganas and with a further direction that the petitioner shall not leave the jurisdiction of Kashipur Police Station, District – South 24 Parganas until further orders and shall meet with the investigating officer of the case once a week until further orders.

It is further directed that the petitioner shall attend the learned court below on the dates specified for hearing and shall not tamper with the evidence and/or intimidate the witnesses in any manner whatsoever.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned trial court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

The application for bail, being CRM (DB) 261 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.)