

CRM (DB) 341 of 2022

(via video conference)

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

In the matter of : **Nur Alam**

..... petitioner

Mr. Anupam Das
Mr. Soupal Chatterjee

.....For the petitioner

Mr. Tanmay Kr. Ghosh
Mr. Arindam Sen

.....For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Manikchak Police Station Case No. 332 of 2020 dated 13.12.2020 under Sections 363/365/34 of the Indian Penal Code read with Section 6 of the Prevention of Children from Sexual Offences Act.

The Learned Lawyer appearing for the Petitioner submitted that Charge Sheet has been filed in this case. Other co-accused are on bail. Statements of the victim are inherently contradictory. Since Charge Sheet has been filed, further custodial detention is not necessary. Accordingly, he prays for bail.

The Learned Lawyer appearing for the State objected to the bail application on the ground that statement of the victim recorded under Section 164 of Cr.P.C. is strongly incriminatory and implicate the present Petitioner in the

alleged offence. Since trial is yet to begin and the allegation is serious, he strongly opposed the bail application.

We have heard the rival submissions. Perused the case diary.

We noticed that the statements of the victim girl recorded under Section 161 of the Cr.P.C. vary widely from those recorded under Section 164 of Cr.P.C. although both the statements were recorded within gap of few days. Medical examination report does not corroborate the allegation of forceful sexual assault.

On perusal of the case diary and other materials on record, considering the extent of incriminating elements against the present Petitioner, we are inclined to allow the bail application.

Accordingly, we allow the bail to the petitioner, namely, **Nur alam** on 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 Judge, Special Court under POCSO Act, Malda and with further condition that the petitioner shall not enter into the jurisdiction of Manikchak Police Station until further orders. He shall intimate the Inspector-in-Charge of the same police station his address of present living immediately.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall also attend learned Court below on all the dates, as specified for hearing.

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) 341 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.)