

06.05.2022

Sl. No. 03

Srimanta

Ct.No.42

CRM (SB)/83/2022

(Via Video Conference)

In Re : An application under Section **439** of the Code of Criminal Procedure, 1973 in connection with **Domjur** Police Station Case No. **288/2021** dated **21.04.2021** under Sections **448/354** of the Indian Penal Code, 1860 and Section **8** of the Protection of Children from Sexual Offences Act.

In the matter of : **Bapan Malik @ Bappan Mallick.**

...Petitioner.

Mr. Pawan Kumar Gupta, Adv.,

Ms. Sofia Nesar, Adv.,

Mr. Santanu Sett, Adv.

...for the petitioner.

Mr. Tanmoy Kumar Ghosh, Adv.,

Mr. Arindam Sen, Adv.

...for the State.

Having heard the Learned Advocates for the parties and on careful perusal of the application for bail as well as the case diary it appears that the allegation against the petitioner is grave.

However, it is submitted by the Learned Advocate for the petitioner that the petitioner is a young boy aged about 23 years. He is in custody for one year. Charge-sheet has been submitted. In the charge-sheet the eyewitness whose name was taken by the brother of the victim girl in his statement under Section 164 of the Code of Criminal Procedure, has not been made a witness in the charge-sheet. Considering of such facts he may be released on bail.

The Learned Public Prosecutor-in-Charge has raised serious objection against the prayer for bail.

Charge-sheet has been submitted against the petitioner for committing offence under Section 8 of the POCSO Act. On filing of

charge-sheet, *prima facie* case against the petitioner has been established. If during investigation the Investigating Officer omits to show any person as a witness in the charge-sheet, it cannot be said, at this stage, to be an incurable defect in investigation touching upon the merit of the case. The Trial Court has every power to examine any person for just decision of the case and for this reason laches in investigation will not stand as an obstacle.

For the reasons stated above, I am not inclined to release the petitioner on bail. Prayer for bail is, thus, **rejected**.

The application is, thus, **disposed of**.

(**Bibek Chaudhuri, J.**)