

01.07.2022
cm/ct 28

C.R.M. (DB) No. 1837 of 2022

sl. no. 15

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **Asansol Women P.S Case No. 72 of 2021** dated **11.07.2021** under Sections **376(2)(d)/376(3)/506/34** of the Indian Penal Code read with Sections 4/6 of the Protection of Children from Sexual Offences Act, 2012.

Rejected

And

In Re : Munna Kenedy @ Kenedi @ Kennedy @ Avinash Kenedy @
Abhinash Kenedy

..... petitioner

Mr. Sourav Chatterjee
Mr. Avik Ghatak
Mr. Saibal Kr. Dasgupta

..... for the petitioner

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

..... for the State

Mr. Deepak Prahladka
Mr. Sarfaraz Hossain

.... for De-facto complainant.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that his client is innocent and he is in custody for 304 days. Trial cannot proceed as the de-facto complainant has assailed the proceedings in CRR 2371 of 2021 and CRR 104 of 2021. It is contended that criminal case was lodged after three years.

Mr. Ghosh, appearing for the State submits that victim girl had been sexually abused by the petitioner.

Mr. Prahladka, learned advocate appearing for the de-facto complainant also opposes the prayer for bail.

We have considered the materials on record. De-facto complainant approached this court assailing the charges framed

against the petitioner and praying for framing charges against the other persons for abetment in CRR 2371 of 2021. A learned Single Bench of this court while admitting the revision and did not direct stay of the proceedings. Victim did not appear before the trial court and non-bailable warrant came to be issued which was challenged in the subsequent revisional application i.e. CRR 104 of 2022. An order of stay of the warrant as well as the proceedings was passed therein. As a consequence, trial has been stalled and the petitioner is in custody.

Under such circumstances, we observe it is open to the petitioner to approach the learned Single Judge for variation or modification of the order of stay passed in the revisional proceeding so that the trial may continue qua the petitioner in the light of Section 35 of the POCSO Act. We express no opinion with regard to the merits of such plea.

However, keeping in mind the stage of the proceeding and as the minor has not been examined as yet, we are not inclined to favorably consider the prayer for bail of the petitioner at this stage.

Accordingly, the prayer for bail of the petitioner is rejected.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)