

CRM 8050 of 2021
(via video conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : Rafik Sardar

.....Petitioner

Mr. Sabir Ahmed
Mr. Mujibar Ali Naskar
Mr. Shraman Sarkar
Mr. Apan Saha

.....for the Petitioner

Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick

.....for the State

Languishing in custody for 760 days, the present application under Section 439 of the Code of Criminal Procedure has been filed by the petitioner in connection with Kultali P.S. Case No. 686 of 2019 dated December 3rd, 2019 under Section 376(3) of the Indian Penal Code read with Section 6 of the Protection of Children from the Sexual Offences Act, 2012 praying for bail.

Mr. Ahmed, learned lawyer appearing for the petitioner filed certified copies of depositions made by various witnesses. Inviting our attention to the statement of the victim girl recorded under Section 164 of the Code, annexed to the bail application and medical examination reports, he submitted that there are contradictory materials on the question of rape. The trial is in progress and particularly, the victim girl has been examined. Therefore, further custodial detention of the present petitioner is not necessary. Accordingly, he prayed for bail.

Per contra, Mr. Sur, learned Additional Public Prosecutor appearing for the State submitted that trial is well in progress. PW 8 is to be examined on 4th February, 2022. It is not a case that trial is delayed. Mr. Sur further submitted that strong incriminating elements are there against the present petitioner and the allegation is very grave and serious. Accordingly, bail is strongly opposed.

We have heard the rival submissions and perused the materials on record.

It appears from the deposition made by the victim and other materials available in the case diary that *prima facie*, strong incriminatory elements are there against the present petitioner. Since trial is pending, we are not inclined to comment anything on evidence. It is for the learned trial Court to decide the issue. The victim is a minor. We are also mindful of the fact that trial is in progress and seven witnesses are examined. Therefore, at this stage, we are not inclined to allow the bail and the same stands rejected.

The application being CRM 8050 of 2021 is dismissed.

We, however, direct the learned trial Court to expedite and conclude the trial.

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.)