

CRM 8175 of 2021
(via video conference)

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

And

In Re : Sk. Nasir Ali Alias Sentu & Anr.

.....Petitioners

Mr. Angshuman Chakraborty

.....for the Petitioners

Mr. Arani Bhattacharyya

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioners in connection with Uluberia Women P.S. Case No. 35/21 dated 21.06.2021 under Sections 376(2)(n)/376D/506 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act.

Mr. Chakraborty, learned advocate appearing for the petitioners submits that contents of the complaint, which was registered as FIR on 30th September, 2021, would reveal that the victim had a love relationship with the petitioner no. 1 and that the allegations against the petitioners pertain to incidents dated 7th June, 2019 and 27th October, 2020. As such, it is evident that there had been a substantial delay in lodging the complaint and such delay had also not been explained. The victim was 18 years of age on the date the complaint was lodged. Upon completion of investigation, charge sheet has already been submitted and as such, further detention of the petitioners, who are in custody for about 198 days, may not be

necessary and they may be enlarged on bail on any stringent condition.

Mr. Chakraborty further submits that the victim is ready and willing to marry the petitioner no. 1 and an affidavit to that effect was submitted before the learned Court below.

Mr. Bhattacharyya, learned advocate appearing for the State opposes the petitioners' prayer and draws our attention to the statement of the victim's brother, as recorded under Section 161 of the Code as well as the statement of the victim girl, as recorded under Sections 161 and 164 of the Code.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

As regards the affidavit which had been submitted by the victim, the learned Court below was pleased to observe that such prayer made by the *de facto* complainant is beyond the scope of POCSO Act. We do not find any infirmity in such observation. The date of birth of the victim is 27th December, 2002 and as such, it is evident that she was minor on the date of the first incident. *Prima facie*, we find from the statement of victim girl that she was threatened by the petitioners and as such, she could not lodge the complaint earlier.

Considering the seriousness of the offence and the extent of complicity of the petitioners in the alleged offence, we are not inclined to any discretion in their favour at this stage more so when, *prima facie*, the possibility that the petitioners may wield influence over the witnesses cannot be totally ruled out. As such, the petitioners' prayer for bail is rejected at this stage.

The application CRM 8175 of 2021 is, accordingly, dismissed.

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.)