

29.08.2022
Sl. No.37
akd
[Rejected]

C. R. M. (DB) 2903 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 23.08.2022 in connection with Barasat Police Station Case No. 510 dated 10.10.2020 under Sections 376(2)(f)/109 of the Indian Penal Code read with Section 6 of the POCSO Act.

And

In Re: ***Bipul Biswas***

... .. Petitioner

Mr. Navanil De
Mr. Ritan Ghosh
Mr. Rajeshwar Chakraborty
Mr. Srinjan Ghosh
Mr. Subhrajit Dey

... .. for the petitioner

Ms. Faria Hossain
Ms. Baisali Basu

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for about 20 months. It is further submitted there is slow progress in the trial of the case.

Learned advocate appearing for the State opposes the prayer for bail and submits trial is in progress.

We have considered the materials on record including the evidence of the minor child implicating the petitioner in offence of penetrative sexual assault. In view of the aforesaid incriminating material and gravity of the offence, we are not inclined to grant bail to the petitioner at this stage.

The application for bail is thus **rejected**.

We have considered the issue of delay. We are surprised to note that in an offence under POCSO Act involving a minor victim, her cross-examination was deferred under sub-section (2) of Section 231 of

the Code of Criminal Procedure. In ***Soumen Biswas @ Litan Biswas vs. State of West Bengal***¹, this court has issued practice directions, inter alia, directing trial courts to consider the issue of deferment of cross-examination of victims under Section 231 of the Code of Criminal Procedure in the light of sub-section (5) of Section 33 of the POCSO Act which mandates that the minor victim shall not be called repeatedly.

Trial court is directed to bear this proposition of law in mind while dealing with prayer for deferment of cross-examination of minor victims in POCSO cases. As the delay is engineered by defence seeking deferment of cross-examination, we refrain from passing any order for expeditious trial save and except observing trial shall be conducted bearing in mind the provisions of Section 35(2) of the POCSO Act.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)

¹ C.R.M. (DB) 2220 of 2022. Order dated 23.08.2022