

31.03.2022
Serial no. 82
CHC
Ct. No. 29
Rejected

CRM 8710 of 2021

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 16th December, 2021 in connection with Kotwali Police Station Case No.329 of 2021, dated 04.04.2021 for the offence punishable under Sections 376D/306 of the Indian Penal Code.

-And-

In the matter of : Pintu Biswas & ors.

...Petitioners

Mr. Milon Mukherjee, Sr. Advocate
Mr. Soumya Basu Roy Chowdhury, Advocate
... ... For the Petitioners

Mr. Madhusudan Sur, Ld. A.,P.P.
Mr. Manoranjan Mahata, Advocate
... ...For the State

Petitioner renews for bail.

Learned Senior Advocate appearing for the petitioners draws attention of the Court to the so called dying declaration of the victim. He submits that the same cannot be considered as a dying declaration of the victim as it does not contain the signature of the deceased. He refers to the so called dying declaration. He submits that there is a noting of the nurse in the dying declaration. According to him, that document cannot be considered as the dying declaration of the victim. He refers to the post mortem report. He submits that petitioners are charged *inter alia* under Section 376D of the Indian Penal Code. He submits that the relevant column

of the post mortem report does not corroborate the charge of gang rape. Consequently, according to him, the moment the issue of gang rape is taken out the charge under Section 306 of the IPC for the lady to commit suicide because of the shame of the gang rape does not stick on the petitioners. He draws the attention of the Court to the so called dying declaration and submits that the victim claims that she was made to wait at the police station for recording her First Information Report with regard to the gang rape and that the police did not do so as there was nobody in the police station to record her statement and therefore, the victim committed suicide.

Learned advocate for the State draws the attention of the Court to the dying declaration of the victim. He also refers to the earlier order of rejection.

The prayers for bail of the petitioners were rejected on September 24, 2021 in CRM 6211 of 2021. While rejecting such prayer, the Court observed that there was a statement made by the victim before the police and that there are statements under Section 161 of the Criminal Procedure Code. The Court also considered the medical report including the writing in the medical report of the victim. The Court considered that the victim lady named all the petitioners as the perpetrators of the crime and proceeded not to grant bail.

The issues presently sought to be raised by the petitioners are ideally last to be decided upon at the trial, if so raised.

There are materials in the case diary implicating all the petitioners therein. There is a statement of the victim implicating all the petitioners in the incident. The victim describes the role played by each of petitioners in her statement. Whether such statement will ultimately be admitted in evidence and is accepted at the trial is a subject matter at the trial. As of now the statement of the victim

available in the case diary cannot be discarded as being of no consequence.

At this stage, since we find there are incriminating materials as against the petitioners as already noted in the earlier order of rejection and considering the fact that there are hardly any material change in circumstances, we are unable to grant bail to the petitioners.

CRM 8710 of 2021 is rejected.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)