

22.09.2022
Sl. No.11
akd
[Rejected]

C. R. M. (DB) 3067 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 05.09.2022 in connection with Bhadreswar Police Station Case No.177 of 2020 dated 14.07.2020 under Sections 376/511 of the Indian Penal Code read with Section 8 of the POCSO Act.

And

In Re: ***Md. Dastogir @ Dastogir Ansari***

... .. Petitioner

Mr. Bitasok Banerjee

... .. for the petitioner

Mr. Saswata Gopal Mukherjee .. Id. Public Prosecutor

Ms. Faria Hossain

Mr. Anand Kesari

... .. for the State

Pursuant to our earlier direction, Investigating Officer is personally present before this court. His presence is noted and dispensed with.

It is submitted on behalf of the petitioner that he is in custody for more than two years. It is further submitted there is delay in the trial of the case.

In view of the aforesaid submission, report with regard to the status of the proceeding and the reason for delay was directed to be submitted.

We have considered the report filed by the Investigating Officer as well as the explanation submitted by him. Explanation for non-submission of report on the earlier day is unsatisfactory. Even the present report does not give a clear indication with regard to non-examination of prosecution witnesses in the schedule commencing from 15.09.2022.

Learned advocate for the petitioner however, submits on 15.09.2022 prosecution witness was present but due to absence of defence lawyer examination could not be held.

This fact is singularly absent in the report submitted by the police officer. Approach of the police officer in the prosecution of the case appears to be lax.

We record our disapproval and direct him to be more diligent in future.

We have considered the materials on record. Statement of the minor victim implicates the petitioner in the offence of penetrative sexual assault. In view of the gravity of the offence and as the vulnerable witness i.e. the minor is proposed to be examined in January, 2023, we do not consider it prudent to enlarge the petitioner on bail at this stage.

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

Trial court is directed to ensure that witnesses particularly the minor is examined during the next schedule fixed and the trial be completed as expeditiously as possible keeping in mind the mandate under Section 35(2) of the POCSO Act.

Let a copy of this order be sent to the court below for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)