

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

CRM (DB) 28 of 2022

In re : An application under Section 439 of the Code of Criminal Procedure, 1973.

In the matter of : **Bipul Charua @ Bipul Cherua @ Jhauar**
..... petitioner

Mr. Jaydeep Kanta Bhowmik
.....For the petitioner

Mr. Biswarup Roy
.....For the State

Mr. Supratim Nag
.....For the *de facto* complainant

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Rajganj P.S. Case No. 32/2019 dated 05.02.2019 under Section 506 of the Indian Penal Code read with Section 4 of the POCSO Act.

Mr. Bhowmik, learned advocate appearing for the petitioner submits that the petitioner's prayer for bail was earlier turned down by a coordinate Bench of this Court on 24th June, 2020. Prior to the said order and subsequent thereto, the victim did not appear before the learned Court below to record her deposition. She gave birth to a female child on 5th May, 2019 and is presently residing along with her child in the house of the petitioner's parents.

He submits that the victim has attained majority and she is agreeable to marry the petitioner. Such marriage could not be solemnized since the petitioner is languishing in custody for more

than 1090 days. In the said conspectus, the petitioner may be enlarged on bail on any stringent condition moreso when, he is ready and willing to marry the victim and live together with the victim and their daughter, who is presently aged about two years.

The contention of Mr. Bhowmik to the effect that the victim is presently residing along with her child with the family of the petitioner has not been disputed by Mr. Nag, learned advocate appearing for the victim.

Mr. Nag further submits, upon instruction, that the victim has attained majority and she is ready and willing to marry the petitioner and that for such reason she did not appear before the learned Court below to record her deposition.

Mr. Roy, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary.

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

It appears that the victim has not appeared before the learned Court below to record her deposition and as such, there had been no substantial progress in the trial subsequent to rejection of the petitioner's earlier prayer for bail on 24th June, 2020. The petitioner has already suffered incarceration for more than 1090 days and there is also no possibility towards conclusion of the trial in the near future. In view thereof, we are of the opinion that further detention of the petitioner, who is in custody for more than 1090 days, is not warranted.

Accordingly, we allow this application and direct that the petitioner, namely, **Bipul Charua @ Bipul Cherua @ Jhauar**, shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Additional Session Judge (Special Court), 2nd Court, Jalpaiguri with a further direction that the petitioner shall appear before the learned Court below on all the dates, as specified for hearing and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM (DB) 28 of 2022, is disposed of.

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.)