

03.03.2022
Court No.01
Item No. 9
Saswata
(rejected)

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

**CRM (DB) 41 of 2022
(Via Video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Cooch Behar Kotwali Police Station Case No. 364 of 2021 dated 17/06/2021 under Section 392 of the Indian Penal Code and adding Section 376D of the Indian Penal Code read with Section 6 of the POCSO Act.

And

In Re: **Majibar Rahaman @ Manik & Anr.**

Petitioners

Mr. Sourav Chatterjee
Mr. Sudip Guha

For the Petitioners

Mr. Ujjal Luksom
Mr. Sourav Ganguly

For the State

The petitioner is seeking bail in connection with Cooch Behar Kotwali Police Station Case No. 364 of 2021 under Section 392 of the Indian Penal Code and adding Section 376D of the Indian Penal Code read with Section 6 of the POCSO Act.

The petitioners are in custody for nearly 255 days. The charge sheet has been submitted on 16/09/2021 but the trial has not commenced as yet.

Learned advocate for the petitioners submits that there is no material found against them and sequence of events would suggest that initially the First Information Report was lodged by the *de facto* complainant, alleging robbery committed at his house. Thereafter, another FIR was lodged incorporating the story of alleged rape upon his wife as well as the minor victim girl.

The learned advocate for the State opposes the prayer for bail and submits that the statement of the minor victim girl recorded under Section 164 of the Code of Criminal Procedure would reveal the role of the petitioner in commission of the offence. Furthermore, they have been identified in a Test Identification Parade.

Learned advocate for the petitioners reacted to the aforesaid submission and submits that the Test Identification Parade was done 2 months after the alleged arrest.

It appears from the record that initially the First Information Report was lodged for commission of a robbery at the house of the complainant. Subsequently, another First Information Report was lodged narrating the full incident and the incident which was sought to be hidden because of the social stigma and the constraint.

We have perused the statements of the mother and the minor victim girl recorded under Section 164 of the Code of Criminal Procedure and the medical report. The role of the petitioners and the manner in which it has been disclosed cannot be ruled out. Furthermore, the petitioners have been identified in Test Identification Parade which may have been done after a considerable gap of time. Once they vividly remember the face and identify the persons because of the daunting events happened in their life, we do not find that on such ground, the petitioners are entitled to be released on bail.

In view of the above, the prayer for bail is *rejected*.

The application for bail being CRM (DB) 41 of 2022 is accordingly dismissed.

(Harish Tandon, J)

(Rabindranath Samanta, J)

