

02.03.2022

COURT : 01
ITEM : 16
MATTER : 439
STATUS : ALLOWED
TRANSCRIBER : nandy

CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI

CRM (DB) 44 of 2022

In Re:- An application for **bail** under section **439** of the Code of Criminal Procedure filed on February 7, 2022 in connection with Jalpaiguri Women Police Station Case No. 52 of 2021 dated 05.05.2021 under Sections 376DA of the Indian Penal Code & Section 6 of the Protection of Children from Sexual Offence Act. (Sessions Case No. 54 of 2021)

And

In the matter of: **Rahul Mondal @ Abhay Mondal**

...Petitioners

Mr. Sandeep Dutta, Advocate

...for the Petitioners

Mr. Aditi Shankar Chakrabroty, Learned APP

Mr. Sagnik Shankar Sikdar, Advocate

...for the State

The petitioner is seeking bail in connection with Jalpaiguri Women Police Station Case No. 52 of 2021 dated 05.05.2021 under Sections 376DA of the Indian Penal Code & Section 6 of the Protection of Children from Sexual Offence Act.

The petitioner has been apprehended in connection with the aforementioned case along with other three co-accused. It is submitted by the learned Advocate of the petitioner that the other co-accused namely Dipu Roy has already been granted bail by this Court in CRM (DB) 1 of 2022 on January 6, 2022. According to him the present petitioner stands on the same footing as that of the other co-accused who had already been released on bail and on the ground of parity the petitioner is expected to be released on bail.

The learned lawyer of the State opposes the prayer for bail. Our attention is drawn to the statement of the minor victim girl recorded under Section 164 of the Code of Criminal Procedure to

corroborate the offence having committed by the petitioner as well as the medical examination report. While granting bail to the other co-accused namely Dipu Roy, this Court categorically records that though the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure implicated the said Dipu Roy who has committed rape on her but the medical examination report does not corroborate her statement in any manner.

In view of the positive findings recorded therein, we perused the medical report wherein the Doctor has opined that no conclusive opinion can be given whether the victim girl was sexually assaulted or not. Since the victim girl has divulged the name of four persons including the petitioner and the said Dipu Roy who had been granted bail by this Court, we find that such allegation having attributable to the conduct of all the co-accused uniformly. The petitioner standing on the same footing that of the other co-accused who had been granted bail is entitled to be released on bail on the ground of parity.

The prayer for bail is thus **allowed**.

Accordingly, we direct that the petitioner namely, **Rahul Mondal @ Abhay Mondal**, 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 local, to the satisfaction of the learned Judge, Second (Special) Court under the POCSO Act, Jalpaiguri and/or the relevant Court in-charge thereof, and on further conditions that the petitioner shall not enter the jurisdiction of Kotwali Police Station except for attending court proceedings and shall provide the address where he shall presently reside to the Officer-in-charge of the concerned police station. The

petitioner shall also meet the Officer-in-charge of the concerned police station once in a fortnight until further orders.

The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event, the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial Court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

The application for bail being **CRM (DB) 44 of 2022** accordingly **disposed of**.

(Harish Tandon, J)

(Rabindranath Samanta, J)