

CRM (DB) 101 of 2022

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : Md Abul @ Motihar Ali

.....Petitioner

Mr. Sudip Guha

.....for the Petitioner

Mr. Aditi Shankar Chakraborty

Mr. Sagnik Sankar Sikdar

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with New Jalpaiguri P.S. Case No. 54 of 2022 dated 11/01/2022 under Sections 363/365 of the Indian Penal Code and subsequently added Section 6 of the Protection of Children from Sexual Offences Act.

Mr. Guha, learned advocate appearing for the petitioner submits that there was a love relationship between the petitioner, who is aged about 22 years with the victim, who is aged about 17 years. They want to marry each other and that the allegations levelled are unfounded. The petitioner had already suffered incarceration for about 113 days and in the said conspectus, custodial interrogation of the petitioner may not be necessary, moreso when upon completion of investigation, charge sheet has been submitted.

Mr. Sikdar, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the statement of the victim, as recorded under Section 164 of the Code.

Prima facie, it appears that there was a love relationship between the victim girl and the petitioner. The victim girl willingly left her residence and accompanied the petitioner. Such facts stand reflected in the 164 statement of the victim girl.

Having heard the learned advocates and considering the materials in the case diary, the nature of allegations, the period of detention already suffered by the petitioner, the medical report and the possible extent of his complicity, we are of the opinion that his further detention is not necessary moreso when upon completion of investigation, charge sheet has been submitted.

Accordingly, we allow the bail to the petitioner, namely, **Md Abul @ Motihar Ali** on 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 Judge, Special Court under the POCSO Act, 2nd Court, Jalpaiguri.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall also attend learned Court below on all the dates, as specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned Trial Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

The application for bail, being CRM (DB) 101 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.

(Ajoy Kumar Mukherjee, J.)

(Tapabrata Chakraborty, J.)