

11.05.2022

Court No.01
rpan/24

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

CRM (DB) 111 of 2022

In Re: An application under Section 439 of the Code of Criminal Procedure;

And

In Re. : **Samsuddin Miah @ Babu**
- Petitioner

Mr. Sabir Ahmed,
Mr. Hillol Saha Podder,
Mr. Sayantan Bhowmik,
Ms. Mousumi Das
... for the petitioner.

Mr. Abhijit Sarkar
Ms. Namrata Das
... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Tufanganj Police Station Case No.194 of 2019 dated 30.05.2019 under Sections 363/365/506/109 of the Indian Penal Code and adding Section 376 of the Indian Penal Code.

Mr. Ahmed, learned advocate appearing for the petitioner submits that both the petitioner and the victim girl are adults. The petitioner married the victim girl on 14th February, 2019, as would be explicit from the document as annexed to the application at page 10. The allegations levelled against the petitioner are absolutely unfounded. The complaint was lodged about 84 days after the alleged incident. The delay has not been explained. Upon completion of investigation, charge-sheet has also been submitted and as such, further detention of the petitioner, who

surrendered on 14th December, 2021, may not be necessary and he may be enlarged on bail on any stringent condition.

Mr. Sarkar, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary, including the statements of the victim, as recorded under Sections 161 and 164 of the Code.

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

The age of the petitioner and the victim lady, the consensual relationship between them, the refusal of medical examination by the victim lady and the fact that the petitioner married the victim lady on 14th February, 2019 are all mitigating factors which tilt the balance towards grant of bail to the petitioner, who had already suffered incarceration since 14th December, 2021 and more so when upon completion of investigation charge-sheet has already been submitted.

Accordingly, we allow this application and direct that the petitioner, namely, **Samsuddin Miah @ Babu** 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 Additional Chief Judicial Magistrate, Tufanganj, Cooch Behar.

It is further directed that the petitioner shall appear before the learned Court below on all the dates specified for hearing and shall not intimidate the witnesses and/or tamper with the evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

The application for bail, being CRM (DB) 111 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.)