

15.
04-01-2022
(ct. no.01)
debajyoti

IN THE HIGH COURT AT CALCUTTA
CIRUIT BENCH AT JALPAIGURI

Via Video Conference

CRM 454 of 2021
with
IA NO:CRAN/1/2021

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Rajganj Police Station Case No.142 of 2020 dated 07-09-2020 under Sections 342/376D/306/34 of the Indian Penal Code read with Sections 6/7 of the Protection of Children from Sexual Offences Act.

- A n d -

In the matter of : Shibu Biswas

.... Petitioner.

Mr. Jaydep Kanta Bhowmik

... For the Petitioner.

Mr. Aditi Shankar Chakraborty, learned APP,
Mr. Sagnik Sankar Sikdar

... For the State.

The petitioner is one of the accused persons. The allegation is of gang rape and also under Sections 6/7 of the Protection of Children from Sexual Offences Act. The petitioner says that he is innocent. There are contradictory statements of the same vital witness being one of the victim girls. He is in custody for 483 days. Charge Sheet has been filed. No useful purpose will be served by keeping him detained any further. He should be enlarged on bail on any condition that this Court may impose.

We have seen the material in the Case Diary. In this case, there are two victim girls. One of them committed suicide by consuming poison. The other one has survived although she also consumed poison. The two girls are sisters. When the surviving victim was taken to the doctor after consuming poison, she made a statement that the accused

persons including the present petitioner raped her sister. However, subsequently in her statement recorded under Section 164 of the Code of Criminal Procedure, the same girl stated that she was told by her sister that her sister was raped, but she does not believe the same to be true since she, at all material times, was with her sister and no such untoward incident happened as has been alleged.

We see that there are contradictory statements of the same victim girl. In any event, Charge Sheet has been filed after completion of investigation. We do not see what purpose will be served by further detention of the petitioner in custody. Charges are also yet to be framed and it is anybody's guess as to when the trial will commence or conclude. The petitioner has been in custody for a considerable period of time. We must keep in our mind the principle that bail is the rule and delay is the exception. We are inclined to enlarge the petitioner on bail, but on stringent conditions.

Accordingly, we direct that the petitioner, namely, **Shibu Biswas**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court under POCSO Act, Jalpaiguri. 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. The petitioner shall remain outside the jurisdiction of Rajganj Police Station until further orders and inform the Officer-in-Charge of the said police station about his address where he would be residing during this period.

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 his bail in accordance with law without further reference to this Court.

The application for bail being CRM 454 of 2021 and CRAN 1 of 2021 are disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Aniruddha Roy, J.)

(Arijit Banerjee, J.)