

CRM (DB) 129 of 2022

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

And

In Re : Tapan Namadas @ Tapan Sarkar

.....Petitioner

Mr. Jaydeep Kanta Bhowmik

.....for the Petitioner

Mr. Ujjwal Luksom

Mr. Tapan Bhattacharjee

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Maynaguri P.S. Case No. 213/2020 dated 26.09.2020 under Sections 363/365 of the Indian Penal Code adding Section 376 of the Indian Penal Code read with Section 4 of the POCSO Act, 2012.

Mr. Bhowmik, learned advocate appearing for the petitioner submits that there was a love relationship between the petitioner and the victim girl. Drawing our attention to the contents of the complaint, he submits it would be explicit therefrom that the victim girl voluntarily left her residence and accompanied the petitioner. Initially, the case was registered under Sections 363 and 365 of the Indian Penal Code and subsequently Section 4 of the POCSO Act was added. There is a dispute pertaining to the actual age of the victim and she refused medical examination. The petitioner had already suffered incarceration for about a month

and in the said conspectus, he may be enlarged on bail on any stringent condition.

Mr. Luksom, learned advocate appearing for the State, however, opposes the petitioner's prayer and submits that investigation is still continuing. He has also drawn our attention to the statements of the victim girl, as recorded under Sections 161 and 164 of the Code. Answering our query, he submits that the victim girl has refused medical examination.

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

In the statement as recorded under Section 164 of the Code, the victim girl has, *inter alia*, stated that earlier on 3rd July, 2020, she voluntarily left her residence and married the petitioner on 7th July, 2020 in a temple and that the petitioner is innocent. Such statements and consensual relationship between the parties coupled with the fact that the victim refused medical examination, constitute mitigating factors which tilt the balance towards grant of bail to the petitioner. Assessing the role attributed to the petitioner in the backdrop of the materials on record and taking into consideration the period of incarceration already suffered by the petitioner, we are of the opinion that his further detention is not necessary moreso when, *prima facie*, there is hardly any possibility that the petitioner would delay the trial by abscondence.

Accordingly, we allow the bail to the petitioner, namely, **Tapan Namadas @ Tapan Sarkar** 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

Additional Sessions Judge, 2nd Court, Jalpaiguri with a further condition that the petitioner shall not enter the jurisdiction of Maynaguri Police Station save and except for meeting with the investigating officer of the case once a week, until further orders.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall also attend the 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) 129 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.)