

10.05.2022

Court No.01
rpan/49

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

CRM (DB) 162 of 2022

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

And

In Re. : **Rahul Sah**

- Petitioner

Mr. Jaydeep Kanta Bhowmik
... for the petitioner.

Mr. Tapan Bhattacharjee
Mr. Abhijit Sarkar
... for the State.

Ms. Debi Sarkar
... for the Intervener.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Banarhat Police Station Case No. 61 of 2022 dated 26.02.2022 under Section 376AB of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 [Sessions (POCSO) Case No. 29 of 2022].

Mr. Bhowmik, learned advocate appearing for the petitioner submits that the petitioner is a second year student of Siliguri Institute of Technology. He had a love relationship with the victim. On 24th February, 2022, a complaint was lodged by the On Duty Medical Officer, who is an Army personnel, as the victim was initially treated in the military hospital and it was diagnosed that she was suffering from ectopic pregnancy. The petitioner was subsequently arrested on 19th March, 2022 and he has already suffered incarceration for more than fifty days. Upon completion of investigation, charge-sheet has also been submitted and as such,

further detention of the petitioner may not be necessary and he may be enlarged on bail on any stringent condition.

Ms. Sarkar, learned advocate, intervenes on behalf of the mother of the victim and submits that her daughter had a love relationship with the petitioner and she was suffering from gynaecological problems.

The learned advocate appearing on behalf of the State opposes the petitioner's prayer and draws our attention to several documents in the case diary, including the statement of the victim, as recorded under Section 164 of the Code.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary, including the statements of the parents of the victim, as recorded under Section 161 of the Code and the statement of the victim, as recorded under Section 164 of the Code. It appears that the victim girl and the petitioner are aged about 15 years and 21 years respectively. The victim in her 164 statement had *inter alia* stated that the petitioner is a bright student and they had consensual relationship and she does not want imposition of any punishment upon the petitioner.

The age of the victim and the petitioner, the consensual relationship between them and the statements made by the victim under Section 164 of the Code are all mitigating factors which tilt the balance towards grant of bail to the petitioner.

Considering the period of incarceration already suffered, the possible extent of complicity of the petitioner in the alleged offence

and in view of the fact that he is a student whose academic career may be ruined, we are of the opinion that his further detention is not necessary in the facts and circumstances, more so when upon completion of investigation charge-sheet has already been submitted.

Accordingly, we allow this application and direct that the petitioner, namely, **Rahul Sah** 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, Special Court under POCSO Act, Jalpaiguri.

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) 162 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.)