

15.09.2022

Item No. 4
Ct.No.1
P.D/P.A

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Miscellaneous Jurisdiction

CRM (DB) 274 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Sessions (POCSO) Case No. 138 of 2020 arising out of Jalpaiguri Women Police Station Case No. 130 of 2020 dated 05.12.2020 under Section 448/376 of the Indian Penal Code, 1860 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.

In the matter of: **Nakul Sarkar**

....Petitioner.

Mr. Anirban Banerjee
Ms. Madhushree Dutta

...For the Petitioner.

Mr. Ujjal Luksom
Ms. Tapan Bhattacharjee

...For the State.

This is an application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Jalpaiguri Women Police Station Case No. 130 of 2020 dt. 05.12.2020 under Section 448/376 (3) of the Indian Penal Code read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 corresponding to Sessions (POCSO) Case No. 138 of 2020 pending before the Learned Court of Special Judge (under POCSO Act), 2nd Additional Sessions Judge at Jalpaiguri.

The petitioner was arrested by the police in connection with the above case on 14th January, 2021 and since then the petitioner is in custody. The investigating officer has completed

the investigation and submitted charge-sheet against the petitioner on 3rd February, 2021 under Section 4 of the POCSO Act, 2012 read with Section 448/376(3) of the IPC against the petitioner.

The petitioner submits that since his arrest, the petitioner is in custody. The petitioner submits that the police have completed investigation and submitted charge-sheet and there is no chance of hampering and tempering with the evidence. The petitioner submits that the petitioner has been falsely implicated in the instant case and the petitioner is no way connected with the instant case. The petitioner further submits that though the police have completed the investigation, submitted charge-sheet and charge has been framed but till date the prosecution failed to examine any witness in the instant case.

The petitioner submits that the petitioner is in custody for the last more 19 months. Vide order dt. 28th July, 2022 this Court has called for report from the Investigating Officer with regard to the steps taken by the IO for examination of the victim girl and the defacto complainant. Incompliance of the order, the I.O. has submitted the following report :

On 02/07/2022 received an order from LD. Additional District & Session Judge, 2nd Court, Jalpaiguri vide Memo. No. 349/ADJ/2nd/JPG with a direction to traceout the whereabouts of the De-facto complainant of the above mentioned case. Accordingly I myself tried to contract the complainant but it could be learnt that the phone no. of the complainant provided during the time of FIR does not exist. I also contacted the Panchayt of Boalmari Nandanpur namely jiten Chandra and he stated that the complainant along with her daughter has left the area and he has no idea about his present whereabouts. However as per local source I came to learn that complainant and his daughter is

presently residing at Kathguri, Morigaon, Assam-782411, and also managed to get his contact No. 9101139493. But after several calls and reminder the complainant denied producing himself. Though after several attempts I also send an Email Message to IC, Morigaon Assam along with other superiors for arranging to inform Khushi Mohan Mandal [Defacto complainant of the above referred case] S/o-Lt. Kedari Manda to report before me. In return I received a message from IC, Morigaon Assam that "Our man has contacted with the son of the summoned person. As told by his son the summoned person is very old about 60-65 and won't be able to go on such a short notice."

It reveals from record that on receipt of the charge-sheet, cognizance was taken on 4th February, 2021 but copy of the charge-sheet was supplied to the petitioner only on 26th July, 2021 and charge was framed on 10th August, 2021. Since 15th September, 2021, the case is posted for evidence but till date not a single witness was examined.

It is found from record, the petitioner had time and again filed an application for bail but considering the nature of offence the Learned Trial Court had rejected the application but simultaneously this court also found that the Learned Trial Judge has not complied with the provisions of Section 35 of the POCSO Act. It is also find from record that only in the month of July, the Learned Trial Court had directed the I.O. to trace out the where about of the defacto complainant though the cognizance was taken on 4th February, 2021 and charge was framed on 10th August, 2021.

The Investigating Officer is present in person before this Court and submits that the I.O. will produce the victim and the

defacto complainant before the Learned Trial Court on the next date fixed.

Considering the case diary and materials on record, this Court finds that the nature of offence is serious and the case is at the stage of evidence and accordingly prayer for bail is rejected at this stage.

The Learned Trial Court is directed to take appropriate steps for examination of the victim and defacto complainant at an early date. C.D. is return to the Counsel for the State.

CRM (DB) 274 of 2022 is rejected.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Krishna Rao, J.)

(Subrata Talukdar, J.)