

14.09.2022

Item No.1

Ct.No.01

F.B

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

CRM (DB) 318 of 2022

In Re: An application for bail under Section 439 of Cr.P.C in connection with G.R. Case No. 1211/2021 arising out of Pradhannagar Police Station Case No. 196 of 2021 dated 05.04.2021 under Sections 376D/354B of the IPC, 1860.

In the matter of : **Utsav Lepcha**

... Petitioner.

Mr. Sabyasachi Banerjee

Mr. P.P. Dasgupta

Ms. M. Palara

Ms. N. Shukla

Mr. Rohit Agarwal

... For the Petitioner.

Mr. Aditi Shankar Chakraborty

Mr. Aniruddha Biswas

... For the State

Party/parties is/are represented in the order of their name/names as printed above in the cause-title.

This is an application in connection with G.R. Case No. 1211/2021 arising out of Pradhannagar Police Station Case No. 196 of 2021 dated 05.04.2021 under Sections 376D/354B of the IPC, 1860 pending before the Learned Additional Chief Judicial Magistrate, Siliguri.

The police had registered the case on the complaint of the victim on the 5th of April, 2021. The petitioner was arrested on the 6th of April, 2021. The police has completed the investigation and submitted Charge Sheet.

Learned Counsel for the petitioner submits that there are several discrepancies in the statement made by the victim in the complaint, statement recorded under Section 161 Cr.P.C. and statement recorded under Section 164 Cr.P.C.

Learned Counsel for the petitioner submits that the victim has improved the case by giving the statement under Section 164 of the Cr.P.C. before the Learned Magistrate.

Learned Counsel for the petitioner submits that as per the call detail records of the victim, it is found that at the time of the incident, the petitioner was not present at the place of occurrence and the victim was at the hotel named Heritage.

Learned Counsel for the petitioner submits that the call details also reflect that on the very next date of the incident, again the victim had been to the said Hotel, which is also reflected in the call details of the victim.

Learned Counsel for the petitioner submits that the petitioner is in custody since his arrest and in spite of completion of investigation and filing of Charge Sheet till date Charge Sheet is not supplied to the petitioner as one of the accused is absconded.

Learned Counsel for the petitioner submits that the petitioner has filed an application for splitting up the case before the Ld. Magistrate but the same was also not done.

Learned Counsel for the petitioner submits that the medical report of the victim also does not support the case of the prosecution.

Learned Counsel for the petitioner submits that the petitioner is a student of BBA-second-year and he is the permanent resident of

Pradhan Nagar, Darjeeling and there is no chance of absconding of the petitioner from the place of residence.

Learned Counsel for the petitioner further submits that the petitioner shall appear before the Learned Trial Court on each and every date of hearing.

Per contra, Learned Counsel for the State submits that as per the statement of the victim the petitioner has played a vital role and the petitioner has also committed the said offence along with the co-accused.

Learned Counsel for the State submits that if the petitioner is released on bail, there is every apprehension that the petitioner will hamper and tamper with the evidence.

Learned Counsel for the State further submits that the medical report of the victim supports the version of the victim.

Learned Counsel for the State further submits that the investigation has been completed and charge-sheet has been filed and the Investigating Officer has already taken appropriate steps for issuance of proclamation against the absconded accused person namely Satyaki Chakraborty.

Learned Counsel for the State further submits that after the completion of the procedure with regard to the proclamation against the absconded accused, the case will be committed to the Court of the Learned Sessions Judge and trial will be commenced at the early stage.

Heard.

Considered the rival submissions of the respective parties, the Case Diary and the materials on record. It is found from the record

that the petitioner has participated an active role for committing the alleged offence which corroborates the statement of the victim recorded under Section 164 of the Cr.P.C. as well as the medical report of the victim. This Court also finds that one accused has already been absconded and, if, at this stage, this petitioner is released on bail, there is every apprehension that the petitioner will hamper and tamper with the evidence.

Considering the active role of the petitioner and the gravity of the offence, this Court do not find any merit to grant bail to the petitioner at this stage.

Accordingly, the prayer for bail of the petitioner is **Rejected**.

CRM(DB) 318 of 2022 is **disposed of** accordingly.

The original C.D. be returned to the Investigating Officer.

The personal appearance of the Investigating Officer stands dispensed with.

All parties are to act on a server copy of this order from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)