

23.03.2023.
26.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 1048 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Dhantala P. S. Case No.291 of 2021 dated 04.07.2021 under Sections 376/417/419 of the Indian Penal Code and Section 6 of the POCSO Act.

In the matter of : Jafirul Mallick.

... Petitioner.

Ms. Sananda Bhattacharyya.

...for the Petitioner.

Md. Anwar Hossain,
Ms. Sreyashee Biswas.

...for the State.

Learned Advocate for the petitioner submits victim was not a minor at the time of occurrence. He renews his prayer for bail.

Learned Advocate for the State opposes the bail prayer.

We have considered the materials on record. Aadhaar card of the victim shows her date of birth as 17.06.2004. As per the said entry, victim was below 18 years of age at the time of occurrence. Incorrect noting in the charge sheet with regard to date of birth is of little consequence and such contention was rightly turned down by the trial court.

After arriving at such finding, we find no justification why the minor and her mother who were present in Court were not examined and the case was adjourned for production of the original date of birth.

We are of the opinion the issue with regard to the age of the victim may be thrashed out during trial. There is no

necessity to produce original date of birth prior to recording deposition of the victim and other witnesses. Trial court is directed to examine the victim and her mother within 30 days from the next date fixed before the said court and proceed with the trial in accordance with law.

Bail prayer of the petitioner was rejected on merits earlier. We note that the defence has resorted to subterfuge to delay the examination of the minor.

In view of such conduct and other incriminating materials on record, we are not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected.

Department is directed to communicate this order to the trial court for necessary compliance.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)