

27.03.2023
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allowed

CRM(DB) No. 1113 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Howrah Police Station Case No. 364 of 2022 dated 03.08.2022 under Sections 406/506/323 of the Indian Penal Code and Section 6 of the POCSO Act and charge-sheet submitted under Sections 323/406/506 of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re : Syed @ Sayed Mirrazuddin petitioner

Mr. Suman De
Mr. Ranjit Singh
Mr. Gaurav Kumar

....for the petitioner

Ms. Anasuya Sinha
Mr. Pinak Kumar Mitra

..... for the State

Mr. Wasim Reza

.....for defacto complainant

Learned Counsel for the petitioner submits he is in custody for 163 days. It is also submitted there is a matrimonial dispute between him and the defacto complainant-wife. Initially, he was arrested in a case under Section 498A of the Indian Penal Code. In the said F.I.R. there is no allegation of sexual abuse upon the minor son. After being released on bail, he has been arrested in the present case based on false and fabricated allegation of sexual abuse on his son.

Learned Counsel for the State opposes the prayer for bail.

Learned Counsel for the defacto complainant submits petitioner is threatening the defacto complainant and other witnesses.

We have considered the materials on record. There is a matrimonial dispute between the parties. Earlier a criminal case was registered alleging offence under Section 498A of the Indian Penal Code. No allegation of sexual abuse upon the minor son was averred in the said FIR. Subsequently, present case alleging sexual abuse was lodged. Credibility of such allegation is to be assessed in the light of the aforesaid omission during trial. Petitioner is in custody for more than 167 days. Charge-sheet has been filed. Under such circumstances, we are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner 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, Howrah, on further condition that petitioner shall not enter the jurisdiction of Sankrail Police Station until further orders. petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

