

21.04.2023.
36.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 1605 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Tehatta P. S. Case No.645 of 2021 dated 01.12.2021 under Section 376AB of the Indian Penal Code and Section 6 of the POCSO Act.

In the matter of : Golam Mandal @ Golam Hossain Mandal.
... Petitioner.

Mr. Sekhar Kr. Basu, Id. Sr. Adv.,
Mr. Asraf Mandal. ...for the Petitioner.

Mr. Saibal Bapuli, Id. A.P.P.,
Mr. Arani Bhattacharyya. ...for the State.

Petitioner renews his prayer for bail. It is contended hymen is intact and no injuries were noted in the medical papers. Allegation of forcible rape is improbable. Accordingly, he renews his bail prayer.

Learned Advocate for the State opposes the bail prayer.

We have considered the materials on record. Victim is a five year old child. As per her statement, she was induced to go into the room of the petitioner and thereafter, the latter violated her. As slight penetration would constitute the offence of penetrative sexual assault, absence of injuries *per se* cannot improbabilise an accusation of rape and that too on a minor. Bail prayer of the petitioner was rejected earlier on merits. Vulnerable witnesses are yet to be examined.

Hence, we are not willing to grant bail to the petitioner at this stage.

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

Trial court is requested to examine the mother of the child and the minor child at the earliest preferably within two months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

Parties shall communicate the order to the trial court for due compliance.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)