

08.05.2023
Sl. No.22
akd
[ALLOWED]

C. R. M. (DB) 1621 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.04.2023 in connection with Domkal Police Station Case No.754 of 2018 dated 19.10.2018 under Sections 377/323/448/506/34 of the Indian Penal Code and Section 4 of the POCSO Act.

And

In Re: ***Selim Sk. @ Salim Sekh***

... .. Petitioner

Mr. Somnath Adhikary

... .. for the petitioner

Mr. Binay Panda
Ms. Puspita Saha

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for more than four years. It is further submitted victim has not supported the prosecution case. On the other hand, medical officer opined that similar injury could be caused by fall on split bamboo. Accordingly, he prays for bail.

Learned Advocate for the State opposes the prayer for bail and submits bail prayer of the petitioner was rejected earlier on merits.

Inspite of notice, nobody appears for the minor victim.

We have considered the materials on record. Though the victim turned hostile in view of the injury suffered by him, a coordinate Bench of this court was not inclined to release the petitioner on bail in November, 2020. Petitioner met with similar fate in January, 2021. Thereafter, the medical officer has been examined in March, 2021. He has proved the injury report but in cross-examination he stated injury could be caused due to fall on split bamboo. Though evidence of medical expert is in the nature of opinion evidence and hypothetical in

nature, it is relevant to note that the minor victim had turned hostile and during cross-examination deposed that he had fallen on a pointed part of bamboo. In view of the aforesaid state of affairs and the change in circumstance i.e. cross-examination of the medical officer probalising the injury as per minor victim, we are of the opinion further detention of the accused/petitioner is not necessary.

Therefore, the accused/petitioner, namely **Selim Sk. @ Salim Sekh**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the POCSO Act, Berhampore, Murshidabad subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail, thus, stands allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)