

13.07.2023
Sl. No.9
akd
[ALLOWED]

C. R. M. (DB) 2128 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 17.05.2023 in connection with Serampore Police Station Case No.422 of 2017 dated 26.08.2017 under Section 376D of the Indian Penal Code.

And

In Re: ***Dr. Amitava De Sarkar***

... .. Petitioner

Mr. Soubhik Mitter
Mr. Debottam Das

... .. for the petitioner

Mr. Jyoti Prakash Chatterjee
Ms. Dibyanjona Das

... .. for the victim

Mr. Rudradipta Nandy .. Id. Addl. Public Prosecutor
Mrs. Sonali Das

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for about 147 days. It is further submitted petitioner is not the principal accused. There were prior disputes and he has been falsely implicated. Accordingly, he prays for bail.

Learned Additional Public Prosecutor opposes the prayer for bail and submits charge has already been framed.

Learned Advocate for the victim also opposes the prayer for bail and submits petitioner had aided and abetted the principal accused in the crime.

We have considered the materials on record. Initially, in the medical report, victim had not referred to the role of the petitioner as an abettor. In her statement recorded under Section 164 of the Code of Criminal Procedure, victim stated that the petitioner had asked her to look after a patient. At that time, co-accused entered and committed

rape. Whether the petitioner had prompted the co-accused to enter the room and commit the crime is unclear and requires to be thrashed out in course of trial. There is delay in lodging FIR but victim stated that she had been assaulted and threats had been held out by the petitioner and others. Be that as it may, she had become pregnant and miscarried. No DNA examination of the foetus had been undertaken. Though FIR was registered under Sections 376D/313 IPC, charge has been framed under Sections 376/120B IPC.

Under such circumstances and keeping in mind the extent of complicity of the petitioner in the alleged crime and as there is no chance of his abscondence, we are of the opinion further detention of the accused/petitioner is not necessary.

Therefore, the accused/petitioner, namely **Dr. Amitava De Sarkar**, 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 Additional Chief Judicial Magistrate, Serampore, Hooghly 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.)

