

14.06.2023

Sl. 23
Court No.29
Suvayan
(Allowed)

C.R.M. (DB) 2233 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Dholahat** P. S. Case No. **455** dated **03.10.2022** under Sections **376AB** of the IPC and Section **6(1)** of the POCSO Act, 2012

And

In the matter of: **Sk. Sattar Ali**

....petitioner

Mr. Ayan Basu
Mr. Sandip Kr. Mondal
Mr. Sumit Rauth

...for the petitioner.

Mr. S. G. Mukherji, Ld. PP
Ms. Faria Hossain
Mr. Anand Keshari

...for the State.

1. Heard the learned Counsel for both the parties.
2. Perused the statement of the witnesses including the complaint petition lodged by father of the victim, and the statement of the victim recorded under Section 164 Cr.P.C. and her medical examination report.
3. The victim being aged about 9 years old is opined to be at pre-pubertal stage and so far as her cycle is concerned she had not yet attained menarche. The private part of the victim including labia majora and labia minora are also at pre-pubertal stage. In the statement of the victim recorded under Section 164 Cr.P.C. there is allegation of penetration by the petitioner. Before the medical officer there is statement of the victim to the effect that the petitioner molested.
4. If we take the materials on record in its entirety penetrative assault does not mean that it is only vulvar penetration. Touch of the male organ with the vagina of the victim also amounts to penetration. In such a case, however, there may not be mark of any injury. But taking into consideration the discrepancy in the statement of the victim and the

circumstances involved including the fact that the victim was medically examined on the same day, we are inclined to take a liberal view in the matter.

5. Regard being had to the facts and submissions in the case, factum of permanent residence of the petitioner, submission of the charge-sheet in the meantime and period of custody of the petitioner, it is directed that the petitioner shall be released on bail by the learned Additional Sessions Judge, 1st Court & Special Court under POCSO Act, Kakdwip, South 24 Parganas in POCSO case No. 72 of 2022 arising out of Dholahat P.S. case No. 455 on such terms and conditions as deemed just and proper in the facts and circumstances of the present case.
6. Accordingly, the prayer for bail of the petitioner is allowed.
7. CRM (DB) 2233 of 2023 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)