

06.09.2023

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rejected

C.R.M.(DB) No. 3303 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Berhampore Police Station Case No. 63 of 2021 dated 18.01.2021 under Sections 363/365/376/34 of the Indian Penal Code read with Sections 4 & 6 of the POCSO Act.

And

In Re : Rajendra Sarkar petitioner

Mr. Soumik Ganguli

Mr. Sourat Nandy

....for the petitioner

Mr. Rudradipta Nandy, learned APP

Mr. Binay Panda

Ms. Puspita Saha

..... for the State

1. During hearing of the bail application it came to the notice of this Court that statement of one Sudip Sarkar is a part of the case diary. Learned Additional Public Prosecutor submitted the said statement does not find place in the charge-sheet filed by the investigating officer. Said Sudip Sarkar has not even been cited as a witness in the charge-sheet. Noticing this anomaly investigating officer was directed to file supplementary affidavit.

2. He is present in Court and supplementary affidavit has been filed.

3. Additional Public Prosecutor also draws our attention to the fact the said statement does not form a part of the copies of the case diary which are maintained as per Police regulations.

Prima facie, it appears that the said statement was introduced in the case diary while in the custody of the Court after submission of charge-sheet.

4. In view of the aforesaid disturbing fact we direct the Superintendent of Police, Murshidabad, to appoint a responsible superior police officer not lower than the rank of Additional Superintendent of Police to enquire into the issue how statement of one Sudip Sarkar found place in the case diary kept in the custody of the Court after submission of charge-sheet. Naturally, enquiry may require interrogation of the employees attached to the Special Court also. Special Judge concerned shall render necessary assistance to the investigating agency. Report of the investigating agency shall be filed on the adjourned date.

5. Report be filed two weeks after ensuing Puja Vacation (30.11.2023).

6. We have considered the materials on record. For the reasons recorded above we have not taken into consideration the statement of Sudip Sarkar. This erases support to the plea of false implication of the petitioner. Materials on record including the statement of the minor has implicated the petitioner in the crime. Hence, we are not inclined to grant bail to the petitioner.

7. The application for bail is, thus, rejected.

8. Copy of this order be communicated to the Superintendent of Police, Murshidabad and the Special Judge, POCSO court for necessary compliance.

9. Personal appearance of the Investigating Officer is noted and dispensed with.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)