

08.09.2023
Sl. No.21
akd
[Rejected]

C. R. M. (DB) 3341 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.08.2023 in connection with Taherpur Police Station Case No.585 of 2022 dated 20.12.2022 under Sections 363/365/506/34/376(3) of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re: **Surajit Modak**

... .. Petitioner

Ms. Sananda Bhattacharyya

... .. for the petitioner

Ms. Zareen N. Khan

Mr. Asif Dewan

... .. for the State

1. Having noted the prevaricating evidence of the minor victim this court by order dated 25.08.2023 directed the Public Prosecutor-in-charge to submit explanation why the said witness had not been declared hostile.
2. Pursuant to the order an explanation has been submitted by the Public Prosecutor-in-charge. The gist of her explanation is to the effect that the victim had admitted her statement before police and Magistrate. Hence, she was not declared hostile.
3. Learned Public Prosecutor-in-charge completely glossed over the fact that the incriminating contents in the statements of the victim before police or Magistrate were at variance to her deposition in chief. During her deposition, she stated as follows :-

“I did not study properly at a point of time & used to roam about here & there, so my mother used to rebuke me. As such, on 19.12.22 I went away to my pisi's house at Pairadanga. So, I was not traceable in our house & my parents in spite of their rigorous search. My said 'pisi' scolded me, for which, I returned back home on 20.12.22 at about 10.00 a.m. voluntarily. After that, I learnt from my parents that a case has been lodged regarding my missing. So, my parents took me to the house of GP Pradhan for remedy. The GP Pradhan sent us to Taherpur P.S. At that time, my mother lodged the case in the P.S. Then,

from the P.S., I was sent to the Court. My mother saw me talking with accused Surojit Modak, so, she thought that I had gone with him. The members of Surojit's house also knew that I used to talk with Surojit. As such, out of suspicion, my mother lodged the case against Surojit & the members of his house."

4. Evidence of the victim is clearly at variance to her statement before police and Magistrate. She had resiled from her earlier statements. This ought to have prompted the prosecution to declare her hostile and confront her with her earlier statement. Prosecutor-in-charge has singularly failed to discharge this responsibility while conducting the prosecution.
5. Trial in sensitive cases involving sexual violence requires to be handled by experienced Public Prosecutors. Section 22 of the Act emphasises the importance of appointing specialized and experienced Prosecutors to conduct such cases. Manner in which the Public Prosecutor-in-charge has conducted the case and her explanation show patent lack of experience and ability to conduct trial.
6. Learned Legal Remembrancer, Government of West Bengal is directed to remove the Public Prosecutor-in-charge from the panel. She shall not conduct the present case or any other case under POCSO Act. Learned Legal Remembrancer shall appoint a special Public Prosecutor to conduct the trial which shall be concluded as expeditiously as possible.
7. Let a copy of this order be communicated to the learned Legal Remembrancer, Government of West Bengal, Public Prosecutor-in-charge and Public Prosecutor of the district concerned for due compliance.
8. We have considered the materials on record. We are of the opinion that the minor had been won over through malevolent activities of the petitioner. Keeping in mind the nature of the offence and the

necessity to recall the minor for cross-examination, we do not consider it prudent to release the petitioner on bail at this stage.

9. The application for bail is thus rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)