

13.09.2023
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allowed

CRM(DB) No. 3388 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Habibpur Police Station Case No. 275 of 2022 dated 21.08.2022 under Sections 417/376 of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re : Lakshman Kisku @ Laxman Kisku petitioner

Mr. Tanmoy Basu
Mr. Debdip Mandal
Ms. Sneha Baksi

....for the petitioner

Mr. Joydeep Roy
Ms. Sujata Das

.... for the State

Mr. Debapriya Samanta
Mr. Samrat Ghosh

.... for the de facto complainant

1. Learned Counsel for the petitioner submits he is in custody for more than 300 days. There was free mixing between the parties for a protracted period of time. As relation soured, present case was registered. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the bail prayer and submits victim was minor at the time when the petitioner cohabited with her.

3. Learned Counsel for the de facto complainant submits petitioner had not disclosed that he was a married man. Earlier application for bail had also been suppressed.

4. We have considered the materials on record including the statement of the victim. It appears there was a continuing relationship for more than seven years. Allegation of suppression of marital status requires to be assessed in the light of the

continuing relationship for more than 7 years during trial. Earlier bail application had been dismissed as withdrawn and not on merits. Though we do not appreciate non-disclosure of this fact, said withdrawal does not impact the consideration of the present bail application on merits.

5. Keeping in mind the nature of accusation which involves free mixing between two young persons for a considerable period of time and the period of detention suffered by the petitioner, we are inclined to grant bail to him.

6. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court, ADJ, 2nd Court, Malda (POCSO Act) on further condition that while on bail the petitioner shall not enter Habibpur Police Station until further orders except for the purpose of attending court proceeding and shall provide the address where he shall presently reside to the investigating agency and court below and shall report to the Officer-in-Charge, Gazole Police Station once in a week until further orders. Petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

7. In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

8. The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)