

20.09.2023
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allowed

CRM(DB) No. 3481 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Ratua Police Station Case No. 29 of 2023 dated 20.01.2023 under Sections 363/376/120B of the Indian Penal Code read with Section 6 of the POCSO Act.

And
In Re : Abu Kalam petitioner

Mr. Samim Ahammed
Mr. Arka Ranjan Bhattacharya
Ms. Gulsanwara Pervin
Mr. Danisuddin Abbasi
....for the petitioner

Ms. Faria Hossain
Ms. Baisali Basu
Mr. Anand Keshri
.... for the State

1. Learned Counsel for the petitioner submits he is in custody for 102 days. It is also submitted that he is a victim of matrimonial discord. Initially he had been alleged to have raped his minor sister-in-law. Case ended in acquittal. Soon thereafter on similar allegation he has been implicated. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioner had sexually violated the minor victim. FIR and other statements show due to undue influence earlier case could not be pursued.

3. We have considered the materials on record. It is contended that there is matrimonial discord between the petitioner and his wife. Minor victim is his sister-in-law. Earlier

a criminal case alleging rape had been lodged against the petitioner which ended in acquittal. Credibility of the claim of de facto complainant and the victim that they were compelled not to proceed with the earlier case requires to be thrashed out during trial. Possibility of false implication in the present case on similar allegation cannot be ruled out. Petitioner is in custody for 102 days. There is no chance of abscondence. Hence, we are inclined to grant bail.

4. 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 Special Judge, Chanchal, Malda, subject to conditions that 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.

5. 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.

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

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)