

27.09.2023
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allowed

CRM(DB) No. 3555 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Nadial Police Station Case No. 124 of 2018 dated 15.07.2018 under Section 376D of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re : Subho Sardar petitioner

Mr. Deepak Prahladka
Ms. Reshmi Khatun

.....for the petitioner

Mr. Shiladitya Banerjee

..... for the State

1. Learned Counsel for the petitioner submits he is in custody for over five years. It is also submitted that victim has already been examined. DNA sample did not match with the petitioner. He renews his bail prayer.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioner was present at the place of occurrence and raped the victim.

3. We have considered the materials on record. Evidence of the victim implicates the petitioner in gang rape. Presence of semen in the private parts of the victim is not a *sine qua non* for commission of offence. Be that as it may, petitioner has suffered incarceration for more than five years and the victim has already been examined. There is little possibility of trial concluding in the near future. On the score of delay we are of the opinion petitioner

has made out a case for bail. He may be released on bail subject to conditions.

4. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.25,000/- with two registered sureties of like amount each, to the satisfaction of the learned Additional Sessions Judge, 2nd Court, Alipore, South 24 Parganas, on further conditions that while on bail the petitioner shall not enter the jurisdiction of District South 24 Parganas 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 of the Police Station concerned 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.

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.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)