

12.10.2023
Sl. No.35
akd
[Rejected]

C. R. M. (DB) 3980 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.10.2023 in connection with Kalna Police Station Case No.1247 of 2022 dated 20.12.2022 under Sections 343/376D/120B/323/325/365/506 of the Indian Penal Code. (G.R. Case No.2564 of 2022)

And

In Re: ***Biswajit Das @ Bhyap***

... .. Petitioner

Mr. Debasish Roy
Mr. Atanu Biswas
Mr. Mrinal Saha

... .. for the petitioner

Ms. Zareen N. Khan
Mr. Arup Sarkar

... .. for the State

1. It is submitted on behalf of the petitioner that the allegation of forcible rape is out and out false. Victim had dispute with her husband and had come to the lodge voluntarily. She stayed in the lodge for a couple of days and thereafter went away. No injuries supporting allegation of forcible rape were found on her body. Co-accused who had also come to the lodge has been enlarged on bail. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits petitioner had taken the victim to the lodge. Thereafter he and his friends had repeatedly raped her. She somehow escaped and lodged complaint. Co-accused who has been granted bail had come to the lodge for a few minutes and does not stand on the same footing with the petitioner.
3. We have considered the materials on record. We have also examined the statement of the victim recorded under Section 164 of

the Code of Criminal Procedure. Victim stated petitioner took her to the lodge and detained her. She was assaulted and raped by him and others. Presence of co-accused who is on bail at the place of occurrence was only for fifteen minutes. He does not appear to have shared common intention with others to commit rape. Accordingly, he was enlarged on bail. Petitioner does not stand on the same footing with the said co-accused. Absence of injuries *per se* does not improbabilise the case of rape. In view of the aforesaid incriminating materials and gravity of the offence, we are not inclined to grant bail to the petitioner at this stage.

4. The application for bail is thus rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)