

17.10.2023
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allowed

CRM(DB) No. 4009 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Panchla Police Station Case No. 228 of 2020 dated 21.09.2020 under Section 376AB of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re : Soumen Dhara petitioner

Mr. Debajyoti Deb
Mr. Somdyuti Parekh

....for the petitioner

Ms. Faria Hossain
Ms. Baisali Basu

.... for the State

Mr. Arani Bhattacharyya

.... for the de facto complainant

1. Learned Counsel for the petitioner submits he is in custody for more than three years. Evidence of the minor is inconsistent. During chief, she stated she was alone at the place of occurrence i.e. pond. But during cross-examination she claimed she was with her mother. There is prior enmity between the parties. Accordingly, he prays for bail.
2. Learned Counsel for the State opposes the prayer for bail and submits bail prayer of the petitioner was rejected earlier.
3. Learned Counsel for the de facto complainant submits minor had been raped. There was no prior enmity between the parties. Petitioner had been manhandled after the incident.
4. We have considered the materials on record. We have also gone through the evidence of the minor and her mother. There is contradiction with regard to the presence of the mother at the place of occurrence. This issue may be assessed in the light of other evidence during trial. There is also a plea of prior enmity

which requires to be considered as motive for false implication. Most of the vital witnesses including minor and her mother have already been examined. Accordingly, we are inclined to grant bail to the petitioner, however, subject to strict conditions.

5. 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 under POCSO Act, Howrah, on further condition that while on bail petitioner shall not enter the jurisdiction of Panchla Police Station except for the purposes of investigation and /or attending court proceeding and shall provide address where he shall reside to the investigating agency as well as court below and shall meet the officer-in-charge of the police station concerned within whose jurisdiction he shall presently reside 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.

6. 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 automatically without further reference to this Court.

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

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

