

23.11.2023
tkm/ct 28
sl no. 53

C.R.M. (DB) 4412 of 2023

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Asansol Women PS case no. 72 of 2021 dated 11.7.2021 under sections 376(2)(d)/376(3)/506/34 IPC read with section 4/6 4 of the POCSO Act

And

In Re : Munna Kenedy @ Kenedi @ Avinash Kenedy @ Abhinash Kenedy
...petitioner

Mr. Ayan Basu
Sk. Salim
Mr. S Routh

..... for the petitioner

Ms. Z N Khan
Md. Kutubuddin

..... for the State

1. Petitioner is in custody for more than two years. He submits victim girl had left the educational institution earlier and the allegation of rape is inherently improbable. He prays for bail.
2. Learned lawyer for the State opposes the bail prayer.
3. We have considered the materials on record including the evidence of the minor, PW4. She has unequivocally stated that she was subjected to penetrative sexual assault by the petitioner. Evidence of witnesses who claimed that she had left the school earlier requires to be seen in the backdrop of the aforesaid evidence of the minor. It is unfortunate the said prosecution witness PW 8 was not declared hostile and confronted with her earlier statement by the prosecution. It is open to the trial judge to recall the said witness and put appropriate questions to her under section 165 of the Evidence Act to unravel the truth. However in view of the evidence of the minor victim and the gravity of offence, we are not inclined to grant bail to the petitioner at this stage.
4. Accordingly, prayer for bail is rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)