

D/L. 36
January 31, 2023
MNS

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (DB) 11 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.01.2023 in connection with Special Case No. 59 of 2022 arising out of Birpara Police Station Case No104 of 2022 dated 09.06.2022 under Sections 363/365/376(2)(n)/34 of the Indian Penal Code, 1860 and read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

And

In the matter of: Arun Kami

.... Petitioner

Mr. Hillol Saha Podder,
Ms. Mosumi Das

... for the petitioner

Mr. A. S. Chakraborty,
Mr. Subhashish Mishra

... for the State

In the present case, the petitioner contends that the petitioner is in custody for about 7 months and 20 days. It is submitted that although the primary allegation was under Section 6 of the Protection of Children from Sexual Offences Act, 2012, along with other corresponding sections of the Indian Penal Code, the allegation under the POCSO Act is not maintainable in view of the nature of allegation made against the petitioner.

Learned counsel for the State opposes the prayer for bail and submits that the petitioner is an agent engaged in human trafficking.

From the materials on record, it transpires that the allegation against the present petitioner is that the petitioner took an amount of Rs. 5,000/- for bringing the victim home.

However, we do not find anything on record even *prima facie* to indicate that the petitioner is involved in any trafficking racket as such.

In the context of the fact that the victim was 17 years of age at the relevant juncture and the petitioner is now about 22 years, the allegation of the petitioner of there being a romantic link between the victim and the primary accused, that is, one Abhishek Kami, cannot be ruled out at this stage.

Be that as it may, since the principal accused is already in custody, we do not find any reason to continue the custody of the present petitioner at this stage.

As such, CRM (DB) 11 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes 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 under the POCSO Act at Alipurduar. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date. The petitioner shall not make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)