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***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

CRM (DB) 102 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.02.2023 in connection with Pradhan Nagar Police Station Case No. 196 of 2021 dated 05.04.2021 under Section 376 of the Indian Penal Code.

In the matter of : Utsav Lepcha

... petitioner

Mr. Joyjit Choudhury,
Mr. Biplab Ghosh,
Mr. Rohit Agarwal,
Mr. Abhishek Singh,
Mr. Rahul Kumr Yadav

...for the petitioner

Mr. Kallol Acharjee,
Mr. Kallol Nag,
Ms. Namrata Das

.....for the State

Mr. Pritam roy

...for the defacto complainant

Learned counsel appearing for the petitioner contends that the petitioner is entitled to bail primarily on the ground that a co-accused person, standing on a similar footing, was granted bail vide order dated February 02, 2023 passed in CRM(DB) 71 of 2023.

Learned counsel appearing for the petitioner further submits that the petitioner is in custody for about two years

and despite the direction by a previous coordinate Bench of the previous Circuit to decide the trial within three months, no effective steps have been taken in that regard by the prosecution.

Learned counsel appearing for the State seriously opposes the prayer for bail and submits that in view of the crime committed, the prayer for bail ought to be rejected.

Learned counsel appearing for the de facto complainant, in addition, submits that the petitioner stands on a more serious footing than the said co-accused insofar as the allegations are concerned, since the present petitioner was a direct participant in the alleged offence, whereas the co-accused, who was let out on bail, was not. That apart, by an order passed by a coordinate Bench of the previous Circuit, the prayer for bail of the present petitioner itself had been refused.

Heard learned counsel for the parties.

It is evident from the perusal of the photocopy of a server copy of the order dated February 02, 2023, passed in respect of the co-accused person that one of the considerations for grant of bail to him was that the said co-accused was a medical practitioner and not a direct participant in the alleged offence, whereas the present petitioner was allegedly a direct participant in the offence.

Although it was also observed in the previous order dated February 02, 2023, passed in respect of the co-accused, that there might have been some embellishment to the original version, the same does not apply squarely to the facts of the present case inasmuch as the present petitioner is concerned in view of the role of the petitioner in the offence as per the complaint.

Hence, considering such circumstances and the fact that the petitioner's bail application was refused only about a month ago by the coordinate Bench of the previous Circuit and the period of three months, which was the outer limit to dispose of the trial as per the order of the previous Bench, we are not inclined to grant bail to the petitioner.

Accordingly, CRM (DB) 102 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)