

08.06.2023
Court No.01
Item No. 12
Allowed

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

ar

CRM (DB) 225 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Gorubathan Police Station Case No. 4 of 2020 dated 09.03.2020 under Sections 366A of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act.

And

In Re: **Nikhil Tamang**

..... Petitioner

Mr. Supriya Singh

...For the Petitioner

Mr. Arijit Ghosh

... For the Defacto Complainant

Ms. Aditi Shankar Chakraborty, Ld. APP

Mr. Aniruddha Biswas

...For the State

The learned Counsel for the petitioner submits that the petitioner is innocent and he is having a love affair with the victim. It is further submitted that he has been falsely implicated. Learned counsel for the petitioner has also drawn our attention to the evidence of the victim to show that the victim had admitted such relationship.

The learned Counsel for the de-facto complainant, however, opposes the prayer for bail. It is submitted that the victim is being threatened by the family members of the petitioner and in the event the petitioner is released on bail there is every possibility of tampering the evidence and intimidating the witness.

The learned Counsel for the State in opposing the prayer for bail submits that only after proclamation was issued the petitioner was arrested and there is a possibility of absconding of the petitioner, if the petitioner is released on bail

Considering the materials available in the case diary, the statement of the victim under Section 164 of the Code of Criminal Procedure, the evidence of the petitioner recorded by the learned trial court and also having regard to the period of detention suffered by the petitioner and the charge-sheet has already been filed, we are of the view that further custodial detention of the petitioner is no more required and the petitioner may be released on bail.

Accordingly, 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 Additional Sessions Judge, (under POCSO Act), Kalimpong, subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and the petitioner shall not leave the jurisdiction without the permission of the Court and shall not enter into the jurisdiction where the minor is residing and he shall cooperate with the investigation. The petitioner shall inform the learned Additional Sessions Judge, (under POCSO Act), Kalimpong as well as the Investigating Officer of the Police Station about his place of residence during bail and trial.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

The application for bail of the petitioner is allowed. CRM (DB) 225 of 2023 is, accordingly, disposed of.

Although we directed Ms. Swarnali Sengupta, learned advocate, to represent the victim appointed by the Secretary, DLSA, Kalimpong. However Mr. Arijit Ghosh, learned advocate, appears today and submits that he has received instruction to appear on behalf of the victim. Accordingly, the

appointment of Mr. Arijit Ghosh shall be regularized by the Secretary, DLSA, Kalimpong, instead of Ms. Swarnali Sengupta.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J)

(Soumen Sen, J)