

AD-21
Ct No.01
Jalpaiguri
22.09.2023
B.Pal

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

CRM (DB) 231 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.05.2023 in connection with Sessions POCSO Case No. 146 of 2021 arising out of Bhaktinagar Police Station Case No. 1529 of 2021 dated 02.12.2021, under Section 4 of the Protection Of Children from Sexual Offences Act.

And

In the matter of: SURESH ROY

...Petitioner

Ms. Madhushri Dutta,
Ms. Sohini Guha Roy

... for the petitioner

Mr. Ujjwal Luksom,
Mr. Dhiman Sil,

... for the State

1. Learned counsel for the petitioner contends that the petitioner is in custody for a prolonged period of 660 day.
2. Learned counsel cites two judgments, one of a coordinate Bench dated August 17, 2023 passed in CRM (DB) 447 of 2023 and the other of the Supreme Court dated July 13, 2023 in *Rabi Prakash vs. The State of Odisha* in support of

her contention that prolonged incarceration is sufficient to release an under-trial on bail.

3. Learned counsel for the petitioner further submits that the medical report does not corroborate the offences alleged.
4. Learned counsel for the State vehemently opposes the prayer for bail and submits that the age of the victim at the relevant juncture was 6 years whereas the petitioner was about 60 years old. Moreover, it is contended that the nature of the crime was heinous, for which the prayer for bail should be refused.
5. We are aware of the legal position that long custody itself is a strong ground for release of a person on bail. The proposition laid down by the Supreme Court in *Rabi Prakash (supra)* and the coordinate Bench is indubitable. However, long incarceration, by itself, is not the sole ground which is required to be considered at the time of adjudicating an application for bail. Although one of the strong pillars for grant of bail, the said consideration has to be juxtaposed with other relevant considerations as well, for example gravity of the crime and the chance of the accused repeating the offence if released on bail.
6. We are of the opinion, from the perusal of the materials handed over to us and the submissions of parties that in view of the nature of the allegations made in the statement of the victim under Section 164 of the Cr. P.C., there cannot be any

medical corroboration of the fact of commission of the offence as such, since no penetration was involved.

7. However, we are of the opinion that the nature of the crime, in the circumstances, was heinous since it was not merely a criminal act but a show of power on the part of a 60 years old man on a child of 6 years, taking full advantage of the implicit vulnerability of the victim. The imbalance of social standing and power between the victim and the perpetrator was fully in play.
8. Such a social offence, if condoned, even at the bail stage, might result in the victim being the subject of further threats by the accused person and/or repetition of similar offence, which ought not to be permitted despite the petitioner being already in custody for 660 days.
9. Hence, in such context, even agreeing with the proposition laid down in *Rabi Prakash (supra)*, we are of the opinion that bail ought not to be granted to the present petitioner.
10. Accordingly, CRM (DB) 231 of 2023 is dismissed.
11. The trial be expedited and it is expected with the same shall be concluded at the earliest, preferably within eight months from date.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)