

05.07.2023

Item no.5

Court No.1.

AB

(Allowed)

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

CRM (DB) No. 310 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with New Jalpaiguri Police Station Case No.152 of 2023 Dated 26.2.2023 under Sections 341/323/506/34 of the Indian Penal Code read with Section 12 of the POCSO Act

And

In the matter of : Md. Kurban @ Kurman @ Rajesh

.....Petitioner.

Mr. Biswarup Roy for the Petitioner.

Mr. A. S. Chakraborty, Id. APP,
Mr. Kallol Nag for the State.

Heard learned Advocate for the petitioner and learned Advocate for the State.

The allegation is under Sections 341/323/506/34 IPC read with Section 12 of the Protection of Children from Sexual Offences Act, 2012.

The petitioner says that he has been framed. He did not do anything to the victim girl. Charge sheet has been submitted after investigation. He is in custody since 26th February, 2023.

We have seen the material in the case diary. In the first information report, it is mentioned that the petitioner pulled the girl with his hands. In the statement of the victim girl recorded

under Section 164 Cr.P.C., however, she says that there was penetration. There is obvious discrepancy between the first information report and the statement of the victim girl. Further, from the medical examination report, we find that there is no injury.

On an overall consideration of the facts and circumstances of the case and the material on record, we are of the view that this is not a fit case for custodial trial.

Accordingly, we direct that the petitioner, namely Md. Kurban @ Kurman @ Rajesh shall be released on bail upon furnishing a bond of Rs.10,000/-, with two registered sureties of like amount each, to the satisfaction of the learned Judge, Special Court under the POCSO Act at Jalpaiguri, and on further conditions that he shall meet the Officer in Charge of the Police Station within the jurisdiction of which he resides once every fortnight until further orders and shall not leave the territorial jurisdiction of the learned Trial Court unless permitted by the said Trial Court and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)