

13.09.2023
08
mb

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

CRM (DB) 480 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.08.2023 in connection with Phansidewa Police Station Case No. 127 of 2023 dated 05.04.2023 under Section 363 of the Indian Penal Code read with Section 365 of the Indian Penal Code.

In the matter of : Md Alam

... petitioner

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Ms. Riya Agarwal

...for the petitioner

Mr. Abhijit Sarkar,
Ms. Namrata Das

.....for the State.

1. Learned counsel appearing for the petitioner submits that the petitioner is in custody for 160 days and the charge sheet has already been submitted. It is further argued that other accused persons have been enlarged on bail.
2. Further, it is hinted that the petitioner was in an amorous relationship with the victim.
3. Learned counsel for the State opposes the prayer for bail and submits that the allegations against the petitioner in the statement under Section 164 of the Code of Criminal Procedure are clinching. That apart, it is submitted that there are no mitigating circumstances to overcome the presumption under the POCSO Act against the petitioner.

4. Upon a careful consideration, it transpires that although the consent of the victim could not be *ipso facto* a relevant factor since the victim was a minor, it also have to keep in mind that as per the First Information report, the petitioner and the victim, the latter being 16 years old at the relevant juncture, had spent two days together and apparently there was scope of there being a consensus between the parties vis-à-vis the alleged offence. Although the petitioner was a married person even at the relevant time, the personal law of the petitioner permits several marriages.

5. Hence, taking into consideration also the fact that the petitioner is already in custody for 160 days, we are of the opinion that bail ought to be granted to the petitioner. However, insofar as the other co-accused persons being on bail is concerned, the same does not furnish any mitigating circumstance, since the allegation against the petitioner was the gravest.

6. Be that as it may, in view of the above discussions, CRM (DB) 480 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a bond of Rs. 10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (POCSO Act)-cum-Additional District and Sessions Judge, First Court at Siliguri. The petitioner shall not leave the territorial

jurisdiction of the Trial Court during the entire period of trial and shall attend on each and every date of trial.

7. It is made clear that the petitioner shall not, in any manner, try to meet the victim during the entire period of trial and/or try to contact the victim in any manner whatsoever.

6. Moreover, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the court or to any police officer or tamper with evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)