

06.09.2023
Court No.01
Item No.37
Avijit Mitra

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

CRM (DB) 491 of 2023

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;

And

In Re: Subash Roy @ Subhash Roy

...Petitioner

Mr. Sourav Ganguly

....For the petitioner

Mr. Kallol Acharjee,
Ms. Sukanya Adhikary

...For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Dhupguri Police Station Case No.510 of 2022 dated 30.08.2022 under Sections 376(2)(1)(n) of the Indian Penal Code and subsequently added Section 120B of the Indian Penal Code.

Mr. Ganguly, learned advocate appearing for the petitioner submits that the allegations levelled against the petitioner are absolutely unfounded. He has already suffered detention since 12th September, 2022. Upon completion of investigation, charge sheet has already been submitted.

Drawing our attention to the prayer made by the prosecution in an application for adding Section 120B of the Indian Penal Code against the persons named in the said application, he submits that such prayer was allowed but the said persons had already been granted bail. A perusal of the said

application would reveal that there was an arbitration meeting held on 29th August, 2022 regarding the incident and an amount of Rs. 5 lakh was demanded from the petitioner. As the petitioner failed to pay the said amount, on the very next day, the complaint was lodged i.e. on 30th August, 2022. In the backdrop of such sequence of facts it is explicit that the petitioner has been falsely implicated. He has already suffered incarceration for about 370 days and there is no possibility towards early conclusion of the trial and in view thereof, further detention of the petitioner may not be necessary.

Mr. Acharjee, learned advocate appearing for the State, however, submits that the victim lady was stated to be mentally unbalanced in the complaint lodged by her mother. In the same, it was also stated that she was pregnant for five months. The statement of the victim girl, as recorded under Section 164 of the Code and the medical report would reveal the direct nexus of the petitioner in the alleged offence.

In reply Mr. Ganguly submits that though the victim lady was stated to be pregnant, no steps were taken by the prosecution for DNA profiling.

Heard the learned advocates appearing for the parties and considered the materials in the case diary.

Prima facie, the contents of the complaint and the statements made by the victim lady, as recorded under Section 164 of the Code, reveal inconsistencies. The medical report also

prima facie does not corroborate the victim's statement. Bearing in mind the nature of accusations in the light of the arguments as advanced and taking note of the fact that the petitioner has already suffered incarceration for about 370 days, we are of the opinion that his further detention may not be necessary.

Accordingly, we allow this application and direct that the petitioner, namely, **Subash Roy @ Subhash Roy**, 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 Sessions Judge, Jalpaiguri with a further direction that the petitioner shall not enter the jurisdiction of Dhupguri Police Station, where the victim lady is residing until further orders. He shall intimate the address where he would be residing immediately to the Officer-in-Charge, Dhupguri Police Station.

He shall attend the learned Court below on all the dates as fixed for hearing. He shall only enter the jurisdiction of Dhupguri Police Station for availing permission from the Officer-in-Charge, Dhupguri Police Station to attend the learned Court below on the dates as fixed for hearing.

It is further directed that the petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable

cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

The application for bail, being C.R.M. (DB) 491 of 2023 is disposed of.

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

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)