

30.08.2023
Court No.01
rpan/17

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

CRM (DB) 499 of 2023

In Re : **Md. Ashraful**
- Petitioner

Mr. Jaydeep Kanta Bhowmik,
Mr. Amunur Hussain,
Mr. Sayantan Bhowmik
... for the Petitioner.
Mr. Abhijit Sarkar,
Mr. Sagnik Sankar Sikdar
... for the State,

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Phansidewa Police Station Case No. 478 of 2022 dated 01.11.2022 under Section 363 of the Indian Penal Code and adding Section 6 of the Protection of Children from Sexual Offences Act, 2012 [SPL (POCSO) Case No. 81/2022].

Mr. Bhowmik, learned advocate appearing for the petitioner submits that there was a consensual relationship between the petitioner and the victim girl, both of whom are teenagers. The petitioner has been falsely implicated and he has already suffered detention since the month of November, 2022. Upon completion of investigation, charge-sheet has already been filed and as such, further detention of the petitioner may not be necessary and he may be enlarged on bail on any stringent condition.

Mr. Sikdar, learned advocate appearing for the State opposes the petitioner's prayer and submits that there are strong incriminating materials on record against the petitioner and as such, his prayer needs to be refused.

We have heard the learned advocates appearing for the respective parties. A perusal of the medical report, the statement of the victim, as recorded under Section 164 of the Code and the contents of the complaint lodged, reveals several inconsistencies and the consensual relationship between the parties, *prima facie*, cannot be ruled out.

Since upon completion of investigation, charge-sheet has also been filed and as the petitioner has already suffered detention since 5th November, 2022, we are of the opinion that further detention of the petitioner is not necessary.

Accordingly, we allow this application and direct that the petitioner, namely, **Md. Ashraful** 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 Judge, Special Court under POCSO Act, 1st Court, Siliguri, Darjeeling with further conditions that he shall not enter the jurisdiction of Phansidewa Police Station until further orders and shall immediately intimate the address where he would be residing to the Inspector-in-charge of Phansidewa Police Station. He shall also meet with the Inspector-in-Charge of the police station within whose jurisdiction he would be residing, once a week until further orders and shall attend the trial court on all 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 CRM (DB) 499 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.)