

05.09.2023
Court No.01
rpan/41

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

CRM (DB) 522 of 2023

In Re : **Subham Das**
- Petitioner

Mr. Gobinda Ghosh
... for the Petitioner.
Ms. Namrata Das
... for the State.
Mr. Hillol Saha Podder
... for the Opposite Party no.2.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Kharibari Police Station Case No. 53 of 2023 dated 14.03.2023 under Section 376 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 [Special (POCSO) Case No. 14 of 2023].

Mr. Ghosh, learned advocate appearing for the petitioner submits that there was a consensual relationship between the petitioner, who was aged about 24 years and the victim girl, who was aged about 16 years. The petitioner has been falsely implicated. He has already suffered incarceration for 170 days. Upon completion of investigation, charge-sheet has also been submitted and as such, further detention of the petitioner may not be necessary.

Ms. Das, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to the statement of the victim girl, as recorded under Section 164 of the Code and other documents in the case diary.

Mr. Saha Podder, learned advocate appearing for the opposite party No.2 submits that the victim girl is desirous of residing together with the petitioner as they have already married.

Heard the learned advocates and considered the materials in the case diary.

Prima facie, it appears that there was free mixing between the petitioner and the opposite party no.2 and whether such free mixing was actuate with malice from the inception, is required to be assessed at the appropriate stage of the proceeding, in accordance with law.

Bearing in mind the nature of accusations, in the light of the arguments as advanced on behalf of the parties including the opposite party no.2 and taking into consideration the fact that the petitioner has already suffered incarceration for 170 days, we are of the opinion that his further detention may not be necessary, moreso when upon completion of investigation charge sheet has been submitted.

Accordingly, we allow this application and direct that the petitioner, namely, **Subham Das** 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 (POCSO Act), Siliguri, Darjeeling with a further condition that he 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) 522 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.)