

JPD-14
Ct No.01
12.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (DB) 523 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 23.08.2023 in connection with Sitai Police Station Case No. 92 of 2023 dated 28.05.2023 under Sections 363/365/109 IPC, read with Section 6 of Protection of Children from Sexual Offences Act, 2012 and corresponding to POCSO Case No. 14 of 2023.

And

In the matter of: Habibur Miah

.... petitioner

Mr. Sudip Guha

....for the petitioner

Mr. Ujjwal Luksom,
Ms. Namrata Das

....for the State

Mr. Partha Pratim Sarkar

... for the *de facto* complainant

1. Learned counsel for the petitioner submits that the petitioner is around 20 years old and the victim is around 15 years. It is submitted that there was a relationship and consensually the victim went with the petitioner. Subsequently, the petitioner was arrested and certain allegations were made. However, it is argued that the ingredients of Section 6 of the POCSO Act have not been *prima facie* satisfied in the present case. Moreover, the petitioner is in custody for more than 100 days.
2. Learned counsel for the *de facto* complainant, on instruction, submits that the *de facto* complainant does not oppose the prayer for bail.
3. Learned counsel for the State submits that serious allegations were made by the victim against the petitioner.

4. Although the victim girl was still far-off from attaining majority and her consent cannot be lent much weight, in the circumstances of the case, the petitioner is already in custody for more than 100 days and the charge-sheet has already been filed.
5. That apart, there is some doubt as to whether the ingredients of Section 5 and Sections 5 and 6 of the POCSO Act were attracted, in view of there being the possibility that the petitioner did not have any positive role to play in perpetrating the offence as contemplated therein.
6. Hence, we are inclined to grant bail to the petitioner.
7. Accordingly, CRM (DB) 523 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish 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) at Dinhata.
8. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
9. Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)