

22.09.2023

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

CRM (DB) 557 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.09.2023 in connection with Falakata Police Station Case No. 233 of 2023 dated 25.05.2023 under Sections 363/365/328/376D/506 of the Indian Penal.

In the matter of : Abu Hossain @ Bappa Hossain @ Bapi Hossain
... petitioner

Mr. Arijit Ghosh

...for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Sagnik Sankar Sikdar

.....for the State.

1. Learned counsel appearing for the petitioner argues that the alleged victims refused medical examination before a Gynecologist. Moreover, the petitioner is already in custody for 120 days.
2. Learned counsel for the State opposes the prayer for bail.
3. However, we find from the case diary that from the preliminary examination conducted on the victim girls it was found that hymen was intact, which negates the possibility of any offence having been committed, which involves penetration. Subsequently, the alleged victims refused medical examination by Gynecologist. Such circumstance, in our opinion, raises sufficient doubt about the veracity of the allegation as adverse inference can be drawn against the victims.

4. Accordingly, CRM (DB) 557 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a bond of Rs. 10,000/- (Rupees Twenty Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court, (under POCSO Act) at Alipurduar. 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.
5. 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.
6. However, the petitioner shall not try to establish any contact or meet the victim girls in any manner whatsoever during the entire period of trial.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)