

JPD-22
Ct No.01
22.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (DB) 571 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.09.2023 in connection with Women Police Station Case No. 167 of 2019 dated 26.12.2019 under Section 6 of Protection of Children from Sexual Offence Act, read with Section 363 IPC and Section 77 of the Juvenile Justice Act and charge sheet No. 07 of 2020 dated 27.01.2020 submitted under Section 6 of the Protection of Children from Sexual Offences Act, read with Sections 363/328 of the IPC and Section 77 of the Juvenile Justice Act.

And

In the matter of: Tapash Sarkar @ Hodol

.... petitioner

Mr. Pretom Das

....for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Biswarup Ray

....for the State

1. Learned counsel for the petitioner submits that although there was previous rejection of bail on June 13, 2022 as well as August 17, 2021, the specific direction of the coordinate Bench dated June 13, 2022 for the charges to be framed on the next date, that is, July 30, 2022, were violated. It is argued that the said laches and institutional issues of the prosecution furnish the petitioner with the right to renew his prayer for bail. Moreover, it is argued that a co-accused person was released on bail.
2. Learned counsel for the State opposes the prayer and submits that the co-accused person on bail is a female, which is not the case for the present petitioner. That apart, it is argued that the

prosecution is trying to expedite the framing of charges as much as possible, but could not do so due to certain reasons beyond control.

3. We find from the records that the prosecution, undoubtedly, are guilty of laches, having not complied with the specific direction of the coordinate Bench dated June 13, 2022. Hence, we specifically direct the prosecution to ensure that the charges are framed within three weeks from date.
4. However, mere non-compliance of the court's direction by the prosecution does not provide *ipso facto* a licence to the accused to obtain bail, particularly in view the nature of the allegation being under Section 6 of the POCSO Act along with other provisions of law.
5. That apart, we find from the records that even after the alleged violation of the direction of the court dated June 13, 2022, a bail application had been moved before another coordinate Bench and the same had been rejected afresh on August 17, 2021, on which date also the same ground was available to the petitioner insofar as charges were not framed till then, in contravention of the order dated June 13, 2022. However, despite such cause being available to the petitioner, the bail of the petitioner was rejected as recently as on August 17, 2021. Thus, we find no subsequent circumstance to justify the grant of bail, which will tantamount to a modification/recall of the order dated August 17, 2021. Hence, also keeping in mind the gravity of the offence alleged, we are inclined to refuse the bail to the petitioner at this stage.

6. Accordingly, CRM (DB) 571 of 2023 is dismissed.
7. Let this order be communicated to the trial court at the earliest, to ensure compliance of the direction of framing of charges within three weeks from date.

Later:

8. In the morning, erroneously we had rejected the prayer for bail on the presumption that subsequent to the coordinate Bench direction dated June 13, 2022 directing charges to be framed by July 30, 2022, a different coordinate Bench had dismissed the prayer for bail. However, on a careful scrutiny subsequently it is discovered that rejection of bail was previous, that is, dated August 17, 2021. Hence, the entire premise of the order passed earlier this morning refusing the bail is hereby recalled, since the same was the result of a *bona fide* inadvertence of the court itself.
9. We take up the bail application for consideration afresh.
10. The petitioner contends that on June 13, 2022, a coordinate Bench had directed that charges be framed on July 30, 2022.
11. We find from the records that although previously there was a rejection of bail on August 17, 2021, the subsequent order dated June 13, 2022 specifically contained the direction as indicated above. However, despite such specific direction, charges have not been framed even till date, that is, after the lapse of more than one year after the direction of the coordinate Bench in that regard.
12. Hence, in view of the inordinate delay on the part of the court below in framing charges, which falls within the purview of

institutional lacuna, we are of the opinion that the benefit of bail ought to be granted to the petitioner.

- 13.** Accordingly, CRM (DB) 571 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), Jalpaiguri.
- 14.** 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.
- 15.** 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.
- 16.** The trial court is, however, directed to immediately comply with the order of the coordinate Bench dated June 13, 2022 and frame charges within a fortnight from the date of communication of this order to the said court and thereafter to proceed with the trial as expeditiously as possible.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)