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

**CRM (DB) 451 of 2022**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.12.2022 in connection with Sessions (POCSO) Case No. 108 of 2022 arising out of Dhupguri P.S. Case No. 481 of 2022 dated 12.08.2022 under Sections 363/365 of the Indian Penal Code read with Section 4 of POCSO Act.

In the matter of : Surojit Roy @ Surajit Roy  
... Petitioner.

Ms. Seema Agarwal,  
Mr. Faij Ahmed  
...for the Petitioner.

Mr. Aditi Shankar Chakraborty,  
Mr. Sagnik Sankar Sikdar  
.....for the State.

The brief facts of the case at this stage are that the petitioner was about 20 years of age and the alleged victim girl of 17 years of age at the time of the alleged incident, that is, on August 09, 2022. Several charges have been brought against the petitioner including Section 4 of POCSO Act.

The defence of the petitioner is primarily that the petitioner and the victim girl have had a romantic affair between them and they escaped together.

As such, there was no case of forcible penetration as required under Section 4 of the POCSO Act and the other

associated sections of the Indian Penal Code clubbed with the same.

It transpires from the submission of learned counsel for the State, who vehemently opposes the payer for bail, as well as the materials on record, that although the victim girl indicated that force had been applied on her and there was evidence of penetration in the medical report, it is not seen from the medical report that there is any other sign of application of force at any juncture. Moreover, it is candidly submitted on behalf of the State that telephone records of conversations between the victim girl and the petitioner of the relevant period indicate that there was frequent communication between the two.

Keeping in view the age of the victim girl at the time of the alleged offence and the fact that she was mature enough to resist in the case force was applied on her, as well as the fact that there was regular communication between the petitioner and the victim girl, we cannot rule out, at least at this stage, the possibility of a romantic affair and consentuality in the physical relationship apparently established between the two. As such, we feel that the presumption as required under the POCSO Act has not arisen in the present case for the purpose of deciding whether the petitioner is entitled to the benefit of bail. That apart, the petitioner is in custody for at least 168 days now.

Also taking into consideration the age of the petitioner, CRM (DB) 451 of 2022 is allowed, thereby granting bail to the petitioner, namely, Surojit Roy @ Surajit Roy, on condition that the petitioner shall furnish a bond of Rs.10,000/- (Rupees Ten Thousand) 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), Second Court at Jalpaiguri, subject to the condition that the petitioner shall not 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.

Moreover, as and when the trial is commenced, the petitioner shall attend the trial court on the dates of trial.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)