

28.11.2023

Serial no.4

Court No.1

(CHC)

(Rejected)

*Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side*

CRM (DB) 644 of 2023

*In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with **Rajganj** Police Station Case No. **23 of 2019** dated **28.01.2019** under Section **506** of the Indian Penal Code and read with Section **04** of the Protection of Children from Sexual Offences Act.*

-And-

In the matter of : **Akash Ekka**

... .. Petitioner

Mr. Pronojit Roy, Advocate

... .. For the Petitioner

Mr. Nilay Chakraborty, Advocate

Mr. Chattu Roy, Advocate

... ..For the **State**

Petitioner prays for bail.

Learned advocate appearing for the petitioner submits that, petitioner is in custody since January 29, 2019. Charges were framed on July 18, 2019. Out of 14 prosecution witnesses only one was examined. He draws attention of the Court to the deposition of the victim girl which was recorded on November 10, 2022. He refers to Section 35 of the Protection of Children

from Sexual Offences Act, 2012. He submits that, the trial is yet to be concluded. He seeks bail on the ground of period of detention as also violation of the provisions of Section 35(2) of the Act, 2012.

Learned advocate appearing for the State submits that, the victim was 14 ½ years when the incident occurred. The victim became pregnant. The principal accused is the petitioner before Court.

We perused the deposition of the victim.

Victim implicates the petitioner.

The petitioner is in incarceration for a considerable period of time. Charges were framed on July 18, 2019. Deposition of the victim was recorded on November 1, 2022.

The Court is informed that next date fixed for recording the evidence of the prosecution witness is December 4, 2023.

We are of the view that, the provisions of Section 35(2) of the Act of 2012 is not mandatory. It mandates the Special Court to complete the trial, as far as possible, within the period prescribed. Therefore, the prescription of one year cannot be said to be of such a mandate, that every trial needs to be completed within a year. Section 35(2) of the Act of 2012 envisages that there can be situation where, the trial could not be completed within a period of one year. It requires the Special Court to endeavour to complete the trial within the specified period in view of the gravity of the offence and the rights of the parties involved.

We are, therefore, direct that, the learned Court will endeavour to dispose of the trial as expeditiously as possible. He will not grant unnecessary adjournments to any of the parties. He will invoke Section 309 of the Criminal Procedure Code and fix the trial on day to day basis as far as practicable.

Prayer for bail of the petitioner is rejected at this stage.
CRM (DB) 644 of 2023 dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)