

22.01.2024

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rejected

C.R.M.(DB) No. 185 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Park Street Police Station Case No. 29 of 2012 dated 09.02.2012 under Sections 376(2)(g)/120B/323/506/34 of the Indian Penal Code.

And

In Re : Md. Ali Khan @ Azahar Ali Petitioner

Mr. Ayan Bhattacharjee
Mr. Amitava Roy
Mr. Devesh Srivastava
.... for the petitioner

Mr. Debasish Roy, learned PP
Mr. Sudip Ghosh
Mr. Gautam Banerjee
.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than seven years and submits as principal witness i.e. the victim had died, she could not be examined in the case. There is no direct evidence implicating him in the offence of gang rape. He prays for bail.

2. Learned Public Prosecutor opposes the bail prayer and submits prosecution evidence is complete. On repeated occasions defence took time to lead its evidence.

3. We have considered the materials on record. Incident involves gang rape of the victim. Petitioner had absconded during the initial trial. After lapse of four years he had been arrested. Unfortunately victim had expired in the meantime and accordingly her evidence could not be led during trial of the petitioner. The issue

whether her evidence during earlier trial could be used against the petitioner was decided against the prosecution in CRR 3012 of 2018. We are informed the matter is pending consideration before the Hon'ble Apex Court. Trial has not been stayed and we are informed prosecution has concluded its evidence. Defence has taken adjournments in order to lead evidence.

4. Offence is a grave one involving gang rape of the victim. Due to abscondence of the petitioner trial could not proceed against him. In the meantime, the most vital witness i.e. victim expired. Under such circumstances, petitioner cannot take advantage of his own conduct and seek bail on the ground of delay in trial. Moreover, trial is at its fag end. Prosecution evidence is complete and defence is dragging its feet under the ruse of leading evidence. Hence release of the petitioner at this stage would unnecessarily protract the proceeding. Accordingly, we are not inclined to grant bail to the petitioner.

5. The application for bail is, thus, rejected.

6. We direct the trial court to examine the defence witnesses, if any, on the next date and thereafter to proceed to the next stage and conclude the trial at an early date preferably within three months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)