

04.03.2024  
tkm/ct 28  
sl no. 49

**C.R.M. (DB) 687 of 2024**

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Islampur P.S case no. 281 of 2023 dated 15.7.2023 under sections 498A/376/34 IPC read with section 3/4 of the DP Act charge sheet submitted under sections 365/365/376(2)(n)/304/120B IPC read with section 6 of the POCSO Act and

**Allowed**

In Re : Sakil Sk @Hossian

... petitioner

Mr. Arindam Jana  
Ms. D Sarkar  
Mr. R Mukhejee  
Mr. A Sengupta  
Ms. T Kar  
Ms. Satabdi Dey

..... for the petitioner

Md. Anwar Hossain  
Mr. Rajesh Jana

..... for the State

1. Petitioner is in custody for 138 days. He submits victim lady suffered from appendicitis and died due to natural causes. Petitioner married to the victim and allegation of forcible rape is out and out false. He prays for bail.

2. Learned lawyer for the State opposes the bail prayer.

3. Learned lawyer for the de facto complainant submits petitioner had committed marital rape while the victim was under treatment.

4. We have considered the materials on record. Petitioner was married to the victim. Victim was below 18 years at the time marriage. There is nothing on record to show that the victim had been forcibly married. On the other hand, it appears that the victim was suffering from appendicitis and was under treatment. Couple had cohabited during the course of treatment. At that time no complaint was raised by the victim. Only after she was re-

admitted to hospital, she complained she had been raped. It is true cohabitation between a minor wife and the petitioner would amount to rape in view of *Independent Thought Vs. UOU*<sup>1</sup>

5. However allegation of forcible rape ignoring the health and well-being of his wife without her consent has been belatedly raised.

6. Under such circumstances we are inclined to grant bail to the petitioner.

7. Accordingly, the petitioner be released on bail upon furnishing 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 under POCSO Act Lalbagh Murshidabad on condition that the petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

8. In the event he fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

9. The application being CRM (DB) 687 of 2024 is disposed of.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**

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<sup>1</sup> (2017) 10 SCC 800