

24.06.2024
Item no.35.
Court No.28.
S. De
(Allowed)

CRM (DB) No. 1837 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 13.06.2024 in connection with Ballygunge Police Station Case No. 71 of 2024 dated 04.05.2024 under Sections 354/354B/376 of the Indian Penal Code.

And

In the matter of : Dipanjan Patra.

.....Petitioner.

Mr. Sabyasachi Banerjee,
Mr. Ayan Bhattacharyya,
Mr. Anirban Dutta,
Mr. Abhishek Roy,for the Petitioner.

Mr. Suman De,
Ms. S. Das,for the State.

Mr. Krishnendu Bhattacharjee,
Mr. A. Jana,
Mr. Sumon Chakraborty,
Mr. Prosenjit Ghosh,
Ms. Gangi Dhang,
Mr. Bhaskar Dolui,
Mr. Priyankar Ganguli,
...for the de facto complainant.

The allegations are under Sections 354B/376 of the Indian Penal Code, i.e. outraging the modesty of a woman and rape.

The petitioner is about 39 years of age. The complainant/victim lady is about 32 years of age.

The case of the complainant is that she came to know the petitioner on a social electronic platform. On April 28, 2024,

she and the petitioner went out to a few restaurants, in the evening. Thereafter though she wanted to return home, the petitioner insisted that she spends some more time with him. Around 4:00 A.M., the petitioner said that he would drop the complainant home in a taxi. Suddenly, the petitioner stopped the taxi in front of a hotel in South Kolkata and said that he had booked a room therein where the complainant could freshen up. Then we quote from the FIR –

“The moment we entered the room, he started to touch my private parts. On my protest, she slapped me and grabbed my throat and tried to remove my clothes but seeing me crying, he finally stopped and fell asleep. Finding the opportunity, I somehow managed to escape. After, the said incident, I was going through severe mental trauma and shame which prevented me from disclosing the same to anyone.

I have finally mustered the courage to come out and speak about it and I am registering this complaint.”

The petitioner denies the allegations. He says that he has been framed. The relationship with the petitioner and the complainant was completely consensual.

We have also noted that in the written complaint dated May 4, 2024, lodged at 11:28 P.M., there is no whisper of rape. In the statement recorded under Section 164 Cr.P.C., on May 6, 2024, for the first time, the complainant alleges rape. The Medical Report which we have seen does not, prima facie, support the version of the complainant.

On an overall assessment of the facts and circumstances of the case and the possible extent of complicity of the petitioner in the alleged offence, we are of the view that the continued detention of the petitioner may not be necessary so long as he co-operates with the Investigating Officer fully.

Accordingly, we direct that the petitioner namely **Dipanjan Patra** shall 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 Chief Judicial Magistrate, Alipore and on further conditions that he shall remain within the jurisdiction of the concerned police station.

The petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in

accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

The complainant has filed an application being CRAN 1 of 2024 wherein she has made the following prayers :

“i. Provide a true copy of the STD test report/medical test report of the accused which was conducted on 13/05/2024 at SSKM, Kolkata;

ii. Peruse the report dated 13/05/2024 and in the event such report does not reflect to be of 4th Generation HIV Test, i.e. ELISA Test, then to issue necessary direction to the I.O. and Superintendent of concerned Correctional Home to take necessary steps for conducting 4th Generation HIV Test, i.e. ELISA Test of the accused;

iii. In the absence of the necessary facility required for conducting 4th Generation HIV Test, i.e. ELISA Test, to issue necessary direction upon the Investigating Officer and Superintendent of concerned Correctional Home to take necessary steps for conducting 4th Generation HIV Test, i.e. ELISA of the accused at any reputed NACO approved

hospital/organization/institution/laboratory or any NABL accredited private hospital/laboratory, and to provide a copy of such HIV test to the victim, for which the victim undertakes to bear all the reasonable expenses;

iv. Issue direction upon the I.O. or the concerned Superintendent of the Correctional Home and/or the Authority conducting STD Test upon the accused to send a report to the effect as to whether any “Antiretroviral Medicines” with respect to HIV was being administered upon the accused person post his arrest as well as whether there was any history of the accused being HIV infected.

-And/Or

To pass any such other necessary order/orders as to Your Lordships may deem fit and proper for the ends of justice.”

We have considered the application. We are of the view that the prayers made in the application are beyond the scope of this bail proceeding. However, we are sure that if these prayers are made before the relevant authority including the

Investigating Officer, such authority shall act strictly, in accordance with law.

CRAN 1 of 2024 is disposed of.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)