

23.09.2024

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rejected

C.R.M.(DB) No. 2797 of 2024
(Assigned)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure(corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023) in connection with Howrah Women Police Station Case No. 31 of 2021 dated 20.11.2021 under Sections 5(d)(p)/6/7 of the POCSO Act and Sections 75/87 of the Juvenile Justice (Care and Protection), Act.

And

In Re : Smritikana Das Petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Arkadeb Bhattacharya
Mr. Mihir Banerjee
Mr. Suman Mallick

....for the petitioner

Mr. Bibaswan Bhattacharya
Mr. Dattatreya Dutta

.... for the State

Mr. Debashis Banerjee
Mr. Rakesh Jana

.... for the de facto complainant

1. Learned senior Counsel for the petitioner submits his client is in custody for two years and ten months. It is also submitted she is a young lady and was employed as a social worker in the Children's Home where the victim was residing. Victim had been sexually exploited and raped in the Children's Home by a co-accused viz. Takla @ Deb Kumar Bhattacharya. Petitioner had no role to play in the alleged crime. Statement of the minor before the learned Magistrate does not incriminate her and her embellished version in Court must be seen in that context.

2. It is further submitted prosecution has examined only six witnesses till date and there is no possibility of trial concluding in the near future. Accordingly, she prays for bail.

3. In the light of the aforesaid submission we called upon the State to submit report with regard to the reason for delay and the probable timeline within which trial may be concluded.

4. Mr. Bhattacharya, for the State places the report on record. In the report it is stated the charge-sheet was filed on 17.01.2022 and the charge came to be framed one year later in 16.01.2023. In the interregnum the petitioner and other accused approached this Court in seriatim praying for discharge and thereby delayed framing of charge. In fact, 39 adjournments had been taken on behalf of the defence in the pre-charge stage. In the course of trial defence had also sought for adjournments. Prosecution proposes to conclude the examination of witnesses within eight months from date.

5. In response, Mr. Ganguly, learned senior Counsel refers to the observations made by a Co-ordinate Bench in CRM (DB) 2275 of 2024 and submits delay was due to non-production of prosecution witnesses during trial.

6. The instant case depicts a sordid state of affairs in a Children's Home in the State. Children Homes were set-up under the provisions of the Juvenile Justice Act to provide shelter, protection and rehabilitation to the Children in Need of Care and Protection ('CNCP' for short). Karuna West Bengal

Women and Children Welfare Society at Howrah is one such home. Victim and others were admitted to the Home as CNCPs. Prosecution case unfolds a nefarious conspiracy between the owners, office bearers of the said Home and outsiders to utilize these hapless children in a routine manner for sexual exploitation. Victim was sexually exploited and raped by one Takla @ Deb Kumar Bhattacharya. The said accused was aided and abetted by Sumit Adhikary, owner of the Home, his wife, Gitasree Adhikary, Secretary of the Home and the petitioner, who is a social worker employed in the Home. She had actively aided and abetted the ghastly crime. In her deposition the victim has specifically described the following role of the petitioner in the following manner:-

“31. If I and other friends in the Home refused to attend such dirty class then Gitasree Adhikary, Smritikana, Munmun, Tushi, Pushpita and Arati used to assault us.

xxx xxx xxx xxx

43. Smritikana was trying to resist my adoption and told me that I would have to say my parents that I would not stay with them.

xxx xxx xxx xxx

44. Smritikana forcefully took me before Takla and used force when I refused to go.

xxx xxx xxx xxx

45. All of them used to show us obscene videos.

xxx xxx xxx xxx

62. After the completion of party and when Takla after committing such ASABHOTAMA (dirty acts) with us then Smritikana used to come in my room and slept with me in my room.”

6. The aforesaid evidence depicts the active role of the petitioner in sexually exploiting the victim, who was admitted as a child in need of care and protection in the home. However,

referring to paragraph 24 of her cross-examination, Mr. Ganguly argues these allegations were made for the first time in Court and did not find place in her earlier statement before the learned Magistrate.

7. While considering bail prayer it is not the duty of the Court to shift the evidence on record and hold a 'mini trial'. However, to satisfy our conscience we had examined the statement of the victim before learned Magistrate vis-à-vis her evidence in court. In her statement before Magistrate she stated immoral activities used to be carried out in the said Home and the petitioner had participated in the said activities. Number of persons came during such immoral activities and sexually abused the children including victim. Gist of the prosecution case against the petitioner is, therefore, transpiring from her statement before Magistrate and the same has nearly been articulated in more graphic details during trial. It is not a case of complete divergence or material omission which would discredit the victim.

8. In light of the aforesaid incriminating materials and gravity of the offence which disclose sexual exploitation and rape of the vulnerable children who were kept in Children's Home for care and protection, we are not inclined to grant bail to the petitioner on merits.

9. It is true the petitioner is in custody for about three years and has canvassed her prayer for bail on the ground of

delay in trial infracting her fundamental right under Article 21 of the Constitution also.

10. Mr. Bhattacharya resists such prayer on the ground that bail prayer of a co-accused, owner of the Home was turned down by a co-ordinate Bench in CRM (DB) 2275 of 2024 only a month ago. He also contends the petitioner and other accused had substantially contributed to the delay by resorting to various subterfuges.

11. On the other hand, Mr. Ganguly submits delay in trial was due to non-production of witnesses which is noted by the co-ordinate Bench in CRM (DB) 2275 of 2024.

12. Having gone through the materials on record we note substantial contribution to the delay was at the behest of the petitioner and co-accused. Though charge-sheet was filed in 2022, framing of charge was delayed by almost a year. Delay was engineered through 39 adjournments at the behest of the defence who resorted to file discharge petitions in seriatim and thereby abuse the process of law to prolong a foregone conclusion i.e. framing of charge.

13. Due to tactics adopted by defense, examination of the witnesses would commence only from February, 2023 and till now six witnesses have been examined. It is true some adjournments were taken by the prosecution to produce its witnesses. Delay in examination of witnesses particularly in a case involving sexual crime upon vulnerable children may be

due to psychological impact of the crime on victims and other allied reasons.

14. Be that as it may, prosecution proposes to conclude examination of witnesses within eight months. Offences are grave and if proved would attract mandatory life imprisonment. Prayer for bail on the ground of delay ought not to be mechanically granted by counting the days of detention. Bail prayer on the ground of delay stems from the fundamental right to speedy trial. The right is not absolute and must be tested on the anvil of proportionality and reasonableness. A fine balance must be struck between the period of undertrial detention on one hand with other relevant circumstances namely, contributory role of the defence in the delay, maximum sentence prescribed in law if the offence is proved and the impact of bail on the vulnerability of witnesses. It is also apposite to note that prayer for bail of the co-accused was turned down by a co-ordinate Bench in August, 2024.

15. Taking into consideration all these facts we are of the considered view that petitioner has not been able to make out a case for bail on the ground of inordinate delay in trial at present. Accordingly, bail prayer of the petitioner is rejected.

16. We, however, request the trial court to keep in mind the period of detention suffered by the petitioner and take necessary steps to conclude the trial at an early date by addressing the following issues :

- (a) Ensure proposal by the State to conclude examination of witnesses within eight months from the next date is strictly adhered to;
- (b) To achieve this end, the trial court shall fix schedules comprising of three to four days for examination of witnesses on a fortnightly basis.
- (c) Witness shall be present on the date fixed for his/her examination and the said examination shall be concluded on that day itself irrespective of any adverse circumstance including call for cessation of work in the trial court;
- (d) No unnecessary adjournment shall be given to either of the parties.

17. We clarify that the observations are tentative and for the purpose of disposal of the bail application, they shall not be considered as binding at subsequent stages of the trial which shall be decided independently and in accordance with law.

18. Copy of this order be communicated to the trial court for necessary compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)