

31.
19-12-2024
(ct. no.29)
debajyoti
(allowed)

CRM (DB) 3169 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Barasat Police Station Case No.651 of 2022 dated 15-09-2022 under Section 376(3) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act.

- A n d -

In the matter of : Dipankar Barai

.... Petitioner.

Mr. Dattatreya Dutta,
Mr. Dibakar Sardar

... For the Petitioner.

Mr. Bibaswan Bhattacharyya,
Mr. Arup Sarkar

... For the State.

Ms. Afreen Begum

... For the defacto complainant
(through High Court Legal
Services Committee).

Dictated by Arijit Banerjee, J.

1. The petitioner says that he is in custody for 2 years 3 months. Only 2 out of 26 charge sheet named witnesses have been examined. There is no possibility of an early conclusion of the trial. The DNA test also does not support the prosecution case. The last witness was examined on March 28, 2023. He prays for bail.

2. Opposing the prayer, learned advocates for the State and the defacto complainant say that the victim was only 13 years of age at the time of the incident. She has squarely

implicated this petitioner in her deposition. All efforts will be made to conclude the trial on an early date.

3. We find that the charge sheet was filed in October, 2022. Charge was framed on January 16, 2023. Between January and March, 2023, two witnesses were examined. After that, there has been absolutely no progress in the trial. From the order dated April 10, 2024 passed by the learned trial Court, it appears that on repeated dates, the prosecution failed to produce its witnesses. By the aforesaid order, the learned trial Court was constrained to pass strictures against the prosecution.

4. Therefore, we see that for the last 1 year 8 months, there has been zero progress in the trial. This cannot be accepted. Every under-trial has a fundamental right to speedy justice and personal liberty. Such right cannot be negated at any cost. The victim has also been examined.

5. Without touching the merits of the case and solely on the touchstone of Article 21 of the Constitution of India, we feel impelled to allow the petitioner's prayer for bail.

6. Accordingly, we direct that the petitioner, namely, **Dipankar Barai**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court, POCSO Act, Barasat. The petitioner shall appear before the learned trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. The petitioner shall remain within the jurisdiction of Barasat Police Station, until further orders, and shall inform, through his learned advocate, the learned trial Court and the Officer-in-Charge/Inspector-in-Charge of Barasat and Ashoknagar Police Station his current local

address where he shall be residing while on bail and shall report to the Officer-in-Charge/Inspector-in-Charge of Barasat Police Station once in a week, until further orders.

7. In the event the petitioner fails to comply with any of the conditions stipulated above without any justifiable cause, the learned trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

8. The application for bail is, thus, **allowed**.

9. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

10. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)