

**CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Tapabrata Chakraborty

and

The Hon'ble Justice Biswaroop Chowdhury

CRM (DB) 129 of 2024

Manaranjan Mandal @ Manoranjan Mandal @ Liton

Versus

The State of West Bengal

For the Petitioner : Mr. Hillol Saha Podder, Adv.

For the State : Mr. Kallol Acharjee, Adv.
Mr. Kallol Nag, Adv.

Judgment Delivered On: 09/04/2024

Biswaroop Chowdhury, J.:

This is an application under Section 439 of the Code of Criminal Procedure filed by the petitioner who is accused in Ghoksadanga Police Station Case No. 187 of 2021 dated 6.6.2021 under Sections 341/376/326/307/379/201 of the Indian Penal Code and is in custody for about 2 years 10 months.

It is the contention of the Petitioner that the de-facto complainant lodged a written complaint before the officer in charge of Ghoksadanga Police Station that on 05-06-2021 at about 5.30 P.M the de-facto complainant and his sister in law went to field to cut grass and the accused person forcefully committed Sexual assault upon the Victim woman and also assaulted her by a sharp weapon. It is further contended that the petitioner was neither present at the place of occurrence nor had any kind of knowledge or any manner of involvement about the alleged incident and has been falsely been implicated in the instant case. It is also contended that the examination of the victim girl is over and there is no chance to abscond if released on bail.

Learned Advocate for the opposite party objects the grant of bail and submits that the examination of I.O. is to be done and the case will be fixed for Examination under Section 313 CrPC thereafter.

Upon perusing the materials in the case diary and the period of detention and upon hearing the Learned Advocates although it appears that the case is at the verge of disposal but it is necessary to decide as to whether the petitioner should be released on bail. In order to decide as to whether the Petitioner should be released on bail it is necessary to consider some Judicial Pronouncements.

In the case of State Vs Jagjit Singh VS reported in AIR. 1962 S.C. 253 the Hon'ble Apex Court laid down the following factors while dealing with bail application.

- i) Nature and Seriousness of the offence.

- ii) The character of the evidence.
- iii) Circumstances peculiar to the accused.
- iv) A reasonable possibility of the presence of the accused not being served at the trial.
- v) Reasonable apprehension of witnesses being tampered with
- vi) The larger interest of the public or the state.
- vii) Similar other conditions which arise when a Court is asked to admit the accused to bail in a non-bailable offence.

In the case of Kalyan Chandra Sarkar VS Rajesh Ranjan reported in (2004) 7SCC P.528 it was observed as follows:

‘The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is need to indicate in such orders reasons for Prima-facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances the following factors also before granting bail they are:

- a) The nature of accusation and the severity of punishment in case of and the of supporting evidence.

- b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complaint/
- c) Prima-facie satisfaction of the Court in Support of the charge [See Ram Govind Upadhyay VS Rambilas (2001) 6 SCC. P-338]”

The Hon’ble Supreme Court in the case of Satender Kumar Antil VS Central Bureau of Investigation Reported in AIR-2022 SC. P-3380 observed as follows:

‘13. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.

14. Presumption of innocence has been acknowledged throughout the world. Article 14 (2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.’

In this matter the petitioner is in custody for 2 years 10 months. As in this case examination of all the witness are over this case cannot be equated with other cases. Now the point for consideration is whether it is unreasonable on the part of the petitioner who is about 23 years of age and is in custody for about 2 years 10 months to pray for bail at this stage.

The answer is obviously no. An undertrial who is presumed to be innocent till proved guilty may reasonably expect that his right to personal

liberty be kept intact during trial and and he be permitted to stand trial by imposing some restriction of his right instead of detention. A person in custodial detention specially when of young age suffers mental agony, and trauma which may be avoided during pre-trial stage, unless it is a very exceptional case and release of the accused will be threat to public safety and prejudicial to trial. A person being incarcerated for a long period during stage of trial loses his contact with his family members and relation which has every-possibility to create stress and depression and is not desirable specially during pre-trial detention. In the event it is not possible to enlarge the accused on confirmed bail the accused may be granted interim bail for short period few times so that he may meet his family members and relations and exercise his right guaranteed under the constitution for a short period during trial when he is presumed to be innocent. When there is a provision of release on parole for a short period of a convict undergoing sentence of imprisonment there may not be any sufficient reason as to why an undertrial cannot be granted interim bail for a short period. Thus even if there is possibility to conclude trial within a short period an undertrial may be granted interim bail if there is difficulty to grant regular bail during trial unless there are very serious exceptional circumstances. All persons have some obligations towards the society and some basic rights. When the said person is implicated in a Criminal Case he has to face trial. During trial he may be kept in custody or he may be on bail with condition to appear on all dates fixed. In the event it is thought fit to keep a person in custody till conclusion of trial he should be granted interim bail to

meet his family. All persons have basic rights to be with their family and in case of trial in custody for some short interim period. A person has some obligations to see the welfare of his family as family is also a part of the society, so scope should be given to discharge the said obligation. When such scope is available to convicts undergoing imprisonment to meet family there is no reason why the same should not be granted to undertrial prisoners who are presumed to be innocent till proved guilty unless it is a very exceptional case.

Upon perusal of the Statement of the Victim Lady under Section 164 CrPC *prima facie* it will appear that on the date of alleged incident the petitioner tried to outrage her modesty and there is no allegation of rape and when she resisted the Petitioner took the scissor and assaulted her. Upon further perusal of injury report there appears cut injury in her hand and neck. The Medical Examination Report does not show injury in the genital organs.

Thus considering the fact that the petitioner is in custody for two year ten months, and considering the nature of allegation from the materials on case diary and considering the age of the Petitioner and that all witnesses except I.O has been examined we are of the view that the petitioner should be granted interim bail for a period of 4 weeks.

Hence it is ordered that the Petitioner be released on interim bail for a period of 4 weeks with two sureties of Rs. 10,000/- each one of which must be local, subject to satisfaction of Learned ACJM Mathabhanga. The petitioner during this period shall meet officer in charge Ghoksadanga P.S. once in a week, and shall surrender after 4 weeks, or on the date fixed for arguments

whichever is earlier. During this period if date is fixed for evidence he must attend on the said dates.

(Biswaroop Chowdhury,J)

(Tapabrata Chakraborty,J)