

19.08.2024
Court No.1
SL No.2
AP/akb

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

CRM(DB) 269 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **New Jalpaiguri** P.S. Case No. **160 of 2024** dated **28.02.2024** under Section **6** of the POCSO Act.

And

In the matter of: **Nirmal Sarkar**

....Petitioner.

Mr. Jaydeep Kanta Bhowmik
Ms. Debi Sarkar
Mr. Shubham Kumar
Ms. Sayantani Das

...For the Petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Sagnik Sankar Sikdar

...For the State.

Ms. Riya Agarwal
Mr. Mahajyoti Guha
Ms. Tulip Saha

...For the Opposite Party/Victim.

1. The application for bail is canvassed on two fold grounds. Firstly, the petitioner is in custody for about 173 days. It is next submitted that while the charge sheet has been filed under Section 6 of the POCSO Act, there is absolutely no evidence on record to indicate any penetrative sexual assault. It is submitted at best the charge against the petitioner can be framed in course of trial under Section 8 of the POCSO Act.

2. When the matter was taken up on the last occasion, on submissions made by the learned counsel for the petitioner, the prosecution as well as the de facto complainant asked to produce evidence of any previous offences against the petitioner.

3. Learned Public Prosecutor submits in Court today that he has not able to gather any evidence in this regard.

4. Learned Public Prosecutor opposes the prayer for bail.

5. This Court also finds that investigation has been completed and charge sheet has been filed. This court has carefully considered the case diary and the statement under Section 164 of the CrPC.

6. Having regard to the facts and circumstances of the case, this Court is inclined to grant bail to the petitioner.

7. Let the petitioner be released on bail upon furnishing a Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only), with two sureties of like amount each, to the satisfaction of the Learned Special Judge under POCSO Act subject to the condition that while on bail the petitioner shall appear before the learned trial court regularly till disposal of the trial and the petitioner shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

8. In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

9. The application for bail is, thus, allowed.

(Rajasekhar Mantha, J.)

(Ajoy Kumar Mukherjee, J.)