

JPD-91
Ct No.01
31.07.2024
S. Bag

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (DB) 381 of 2024

In Re: - An application for bail under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with New Cooch Behar G.R.P.S. Case No. 10/2022 pending before the Learned Judge POCSO Court cum Additional Sessions Judge, 2nd Court, Cooch Behar arising out of POCSO Case No. 37 of 2022 in connection of New Cooch Behar G.R.P.S. Case No. 10 of 2022 dated 25.7.2022 under Section 10/12 of the POCSO Act, chargesheeted under Sections 376(2)(b)/376(3) of the Indian Penal Code, 1860 r/w Section 6/12 of the POCSO Act, 2012.

And

In the matter of: Sailesh Kumar

....petitioner

Ms. Riya Agarwal, Adv.

... for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP

Mr. Abhijit Sarkar, Adv.

Mr. Sagnik Sankar Sikdar, Adv.

... for the State

1. The petitioner seeks bail. It is contended that soon after apprehension, the petitioner was granted bail by the trial court but the same was subsequently cancelled by a co-ordinate Bench of this Court, although the grounds of cancellation were akin to a challenge on merits against the order of bail. Be that as it may, the said order of the co-ordinate Bench was taken up to the Supreme Court but such challenge met with failure.

2. Thereafter, on February 17, 2024, the petitioner voluntarily surrounded before the trial court and since then is in custody. It is argued that the victim girl herself has stated that she had no objection if the petitioner was released on bail. It is also submitted that since the said statement was made before the Court, it has to be lent credence.
3. It is further argued that the nature of the offence is such that bail may be granted to the petitioner.
4. Learned counsel for the state seriously opposes the prayer for bail and submits that the petitioner, being in the responsible position of a Station Master, allegedly sought to molest the victim girl, who was a minor, in an empty railway engine. As such, the crime was heinous and bail ought to be rejected. Furthermore, learned counsel places reliance on the statement of the victim girl under Section 164 of the Criminal Procedure Code which, according to learned counsel for the State, also goes squarely against the petitioner.
5. That apart, it is argued that in view of the recent cancellation of the bail and affirmation of the same in the Special Leave Petition before the Supreme Court, and in the absence of any change in circumstance thereafter, the prayer for bail ought to be rejected.
6. Upon a careful consideration of the materials placed before the court and the submission of parties, keeping in view the fact that the petitioner, as the Station Master, has a superior

liability then any normal person in the alleged offence and also that not much time has elapsed after the recent refusal of the Supreme Court to interfere with the cancellation of bail of the petitioner, we are of the opinion that there is no occasion to grant bail to the petitioner at this stage.

7. Insofar as the purported 'no objection' of the victim is concerned, we find that the said statement, written in Hindi, is followed by a left thumb impression, apparently of the victim girl, without any endorsement as to whether the said statement was read over and explained to her. Although the learned Court below recorded an observation to the effect that the said statement was made by the victim girl, in view of the gravity of the offence and the other circumstances as indicated above, the prayer for bail is refused.
8. According CRM(DB) 381/2024 is dismissed.
9. The trial court is requested to expedite the trial and preferably to conclude the same within a year from the date of communication of this order to the said court.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)