

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

02.01.2024
JPD 7
Sws.M
ct.1

C.R.M. (DB) 715 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special POCSO Case No. 29 of 2023 arising out of Pedong Police Station Case No. 16 of 2023 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 9 of Prohibition of Child Marriage Act, 2006

Allowed

In the matter of : Arun Chettri

..... Petitioner

Mr. Prajwal Gurung

...for the Petitioner

Mr. Aditi Sankar Chakraborty

Mr. Sagnik Sankar Sikdar

...for the State

Mr. Satyajit Paul

...for the Victim

Heard Mr. Prajwal Gurung, learned counsel for the petitioner, Mr. Satyajit Paul, learned counsel for the victim girl who has put in appearance today and Mr. Sagnik Sankar Sikdar, learned State Advocate.

This bail application has been filed praying to enlarge on bail under Section 439 Cr.P.C. in Special POCSO Case No. 29 of 2023 arising out of Pedong Police Station Case No. 16 of 2023 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 9 of Prohibition of Child Marriage Act, 2006 and Section 313 of I.P.C.

As per prosecution case, the Block Medical Officer of Health, Pedong Rural hospital, Kalimpong, had informed the Officer-in-Charge, Pedong, Kalimpong on 10.07.2023 that the victim girl aged about 16 years has been found pregnant. based on the aforesaid report, the Criminal case was registered as aforesaid and the petitioner was arrested on 12.07.2023 at 18:15 hours. The bail application of the petitioner was rejected by an order dated 23.11.2023 in Special POSCO Case no. 29 of 2023 passed by the Judge, Special Court (POSCO), Kalimpong. The petitioner has now filed the present bail application.

As per own case of the prosecution, the statement of the victim girl dated 12.07.2023 and 17.07.2023 recorded under Section 161 Cr.P.C. and also the statement of the victim girl dated 18.07.2023 recorded by the Judicial Magistrate, 1st Class, Kalimpong recorded under Section 164 Cr.P.C., the victim girl and the petitioner were married on 11.11.2022, the victim girl was aged about 16 year, her date of birth is 17.08.2006, she was living at her matrimonial house, on feeling some pain in stomach, she alone went to the Rural Health Centre, where she was examined by Archana Subba(HA) (F) who found her to be pregnant and accordingly send the information to the Block Medical Officer, who lodged the complaint/FIR.

Learned counsel for the petitioner, learned counsel for the victim girl and learned State advocate have jointly stated

that presently the victim girl is residing at her paternal house. Learned counsel for the petitioner and learned counsel for the victim girl have stated that the victim girl is eager to live along with the accused.

In her statement under Section 164 Cr.P.C., the victim girl stated that she wants to take her husband out of jail and her husband and his family is innocent. She further stated that she is facing these circumstances because of herself. She also stated that her husband is helping in her studies. She also stated that she found that she was one month pregnant on 05.07.2023 and she went to the health centre for health care and decided to abort and her sister suggested her to visit a doctor and thereafter she came back to her maternal house. Thereafter, the doctor summoned her and made a complaint at the Pedong Police Station.

Learned State advocate has opposed the bail application on the ground that the victim girl is under age. However, he does not dispute the statement recorded under Section 161 and 164 Cr.P.C. as mentioned above.

Considering the submissions of learned counsel for the parties, the statement of the victim girl recorded under Section 161 and 164 as well as the statement of the informant recorded under Section 161 Cr.P.C. as available in the CD produced before us and without commenting further on the merits of the case, we find that the petitioner has made out a case for grant of bail.

In view of the aforesaid, the petitioner/accused, Arun Chettri, son of Jewan Chettri, resident of Mool Sakyong, under Sakyong Gram Panchayat, Police Station Pedong, District Kalimpong (West Bengal) is enlarged on bail on furnishing a personal bond and 2 sureties of Rs.10,000/- each to the satisfaction of the concerned Court, subject to the following conditions:-

- (i) The petitioner shall not in any way influence the witnesses or try to delay the conclusion of trial.
- (ii) The petitioner shall remain personally present before the learned Trial Court on each day when witnesses are produced for examination and shall not seek any adjournment on such date.
- (iii) The petitioner shall not misuse liberty of bail in any way.
- (iv) The petitioner shall remain personally present for a statement under Section 313 Cr.P.C.
- (v) At least one surety offered by the petitioner as aforesaid, shall be a local resident.
- (vi) The petitioner shall not leave India without leave of the Court.

On furnishing of the personal bond and the surety by the petitioner as aforesaid, the petitioner shall be released on bail forthwith.

The application being CRM (DB) 715 of 2023 is disposed of.

Urgent certified copy of this order, if applied for, be supplied to the learned counsel for the respective parties.

(Rai Chattopadhyay, J.)

(Surya Prakash Kesarwani, J.)