

ST 02(10)2023
CNR-WBBK090002652023

In connection with Indpur P.S. case no. 43 of 2023 dated 03.06.2023 U/s 376(2) (n) of IPC corresponding to GR case no. 461 of 2023.

Order No. 12
Dated 08.01.2024

Today is the date fixed for hearing of the bail petition dated 19.12.2023 filed on behalf of the accused person namely Milan Duley.

Ld. Advocate for the said accused person is present.

Ld. P.P. In-charge of this case is present.

Ld. Advocate for the said accused person has submitted that this accused person is in custody since 03.06.2023, and charge sheet in this case has been filed. He has further submitted that, in this case no where any of the prosecution witnesses stated the exact date of the incident and even the formal FIR is silent in that regard, and indicate that incident was happened one year ago that indicate happening of the incident only once. He has further submitted that, there are lot of variations regarding the place of occurrence mentioned in the written-complaint and rough sketch map. He has further submitted that, there are lot of variations regarding the designs of the alleged incidents mentioned in written-complaint complaint and in the recorded statement U/s 164 Cr.P.C of the victim. He has further submitted that, the permanent resident of the accused person is not near to the alleged place of occurrence or near to the residence to victim. He has further submitted that, this accused person has been falsely implicated in this case. He has further submitted that, from the contents of written-complaint it is clear that there are allegations of consensual relation between accused person and victim and that is not covered under the provisions of 376(2) (n) of the IPC. He has further submitted that at the time of alleged incident accused person was not present at the place of occurrence. He prays for enlarging this accused person on bail on any condition.

Ld. Public Prosecutor In-charge of this case has vehemently opposed the bail prayer of this accused person, and submitted that from the contents of written-complaint , contents of the recorded statement U/s 164 Cr.P.C of the victim, and recorded statement U/s 161 Cr.P.C of the witnesses, it is clear that there are allegations against this accused person that he has committed repeated rape upon the victim and impregnated victim. He has further submitted that I.O. of this case has taken step for DNA profiling of the victim , accused person and child of the victim, but report of the said DNA profiling has not yet been received and I.O. had prayed for filing supplementary charge-sheet in that respect. He prays for rejecting the bail prayer of this accused person.

I have heard the submissions of the Ld. Advocate for the said accused person, the P.P. In-charge of this case and perused the records including CD. From the records, it is revealed that this accused person is in custody since 03.06.2023 and charge-sheet in this case has been filed. From the records specially contents of the written-complaint and contents of the recorded statement U/s 164 Cr.P.C of victim, and medical examination report of the victim dated 18.06.2023 it is revealed that, there are allegations against the present accused person that he has committed repeated rape upon the victim and also impregnated the victim . From the records, it is revealed that a male child was delivered by the victim on 22.07.2023. It is fact that there are some variations regarding date of the alleged incidents in the records, as none of the prosecution witnesses stated the exact date of incidents amount to commission of the alleged offence. It is also fact that, in this case FIR has been lodged delay and there is no any reason mentioned in column 8 of the formal FIR for delay of lodging of FIR, but in recorded statement U/s 161 of Cr.P.C of victim there is allegations against the accused person that he threatened victim. Although learned Advocate for the accused person has submitted that from the allegations against the accused person, it is clear that it will not covered u/s 376 (2) (n) of IPC but the submission of the Ld. Advocate for the accused person cannot be considered at this stage without examining the victim. With above observations, and considering the materials on records specially the seriousness of allegations against this accused person and presumption against this accused person U/s 114A of the Indian Evidence Act, I am of the view that it will not be justified to enlarge this accused person on bail at this stage, hence the bail petition dated 19.12.2023 filed on behalf of this accused person, namely Milan Duley is rejected, in corollary the accused person is remanded to J/C till next date fixed.

With the above observations, the bail petition dated 19.12.2023 filed on behalf of the accused person namely Milan Duley is disposed of.

Let CD be returned.

To date (05.02.2024) for production of the accused person in custody and prosecution evidence.

Dictated & corrected
by me.

A.S.J

Additional Sessions Judge,
Khatra, Dist.- Bankura
J.O. Code WB01399