

IN THE 2nd COURT OF THE ADDITIONAL SESSIONS JUDGE, ALIPORE

Special ST - 11(01)2023

Special Case No.313/2022

CNR -WBSP01-017814-2022

Present :Sudipta Bhattacharjee (JO Code - WB00794)
Judge, Special Court & 2nd A.S.J.,
Alipore, South 24-Parganas.

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27.09.2023

Record is put up on prayer of learned advocate for accused **Surajit Bhattacharjee**.

In compliance with the solemn direction of the Hon'ble High Court, Calcutta in connection with CRM (DB) No.1977 of 2023, accused **Surajit Bhattacharjee** surrendered before the Court and he is taken into custody till 11.10.2023, as the bail order of this Court has been suspended by that order of the Hon'ble High Court, Calcutta.

Learned lawyer for the accused person placed an Order of the Hon'ble High Court. Let it be kept with the case record.

Learned lawyer for accused filed a petition for bail.

Copy has been served upon the learned Special P.P Indrani Roy Chowdhury. Let it be kept with the case record.

The Defacto complainant is present.

Learned lawyer for the defacto complainant is also present.

As per direction of the Hon'ble High Court, Calcutta the bail petition filed by the accused is taken up 'afresh', in presence of the defacto complainant, the mother of the victim.

Learned lawyer for accused by filing a petition submitted that the accused person has been implicated in the present case u/s 376(3)/354/506 of I.P.C r/w section 4/6/12 of POCSO Act, 2012. After evidence of the victim girl (PW-1) and Defacto complainant (PW-2) the accused filed a petition for bail on 23.02.2023, and on 27.02.2023 was the date fixed for hearing of bail petition. Learned lawyer for the accused pointed out that on the date of application for bail the cross examination of the defacto complainant being PW-2 was completed before the Court. The copy was served to the learned Special P.P. On 27.02.2023 the Court accorded an order of bail. Learned lawyer further submitted that the defacto complainant on 17.04.2023 filed an application prayed for supplying a copy upon her u/s 207 of Cr.P.C and on 13.06.2023 the defacto complainant by filing an affidavit submitted that accused Surajit Bhattacharya violated the condition imposed by this Court vide Order No.6 dated 27.02.2023. learned lawyer for the accused also pointed out that on 13.06.2023 and 14.06.2023 PW-3 and PW-4 being maternal uncle of the victim were examined and cross examined. Learned

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lawyer for the accused further pointed out that on 13.06.2023 he filed a petition along with some documents regarding local address of the accused where the accused after being released on bail started residing. He pointed out that on the same day a report was called for by the Court asking O.C of Behala P.S and I.O of this case i.e. the present Thakurpukur P.S Case to inquire into the matter alleged by the defacto complainant and to submit a comprehensive report in respect of the allegation made by the defacto complainant. Accordingly I.O submitted two separate reports on 15.06.2023. On 20.06.2023 after contested hearing this Court has rejected prayer of the defacto complainant as regard to the violation of the condition of the bail of the accused. He also submitted that the accused person never violated the condition of bail granted by the Court and this Court also gave caution to the defacto complainant not to file such type of harassing affidavit in future. He specifically stated that the accused since after being released on bail has never entered into the jurisdiction of Thakurpukur P.S as reflected from report from the I.O. Thus, accused has prayed for bail keeping in view of this order passed by this Court on 27.02.2023.

Learned Special P.P raised strong objection against prayer for bail in term of observation made by the Hon'ble High Court.

Learned Defacto complainant also raised objection against bail prayer of the accused and submitted that defacto complainant has preferred an application before the Hon'ble High Court and accordingly bail order passed by this Court on 27.02.2023 after contesting hearing the Hon'ble High Court was pleased to suspend the order of bail for a four weeks passed by this Court on 27.02.2023 and directed this Court to pass afresh bail order. In the said order the Hon'ble High Court has made certain observation against bail order passed by this Court. He pointed out that said bail order was passed without hearing of the defacto complainant. He by placing the judgement of the Hon'ble Supreme Court in Jagjeet Singh & Ors Vs Asish Mishra @ Manu & Anrs has submitted that the victim has every right to participate in criminal proceeding including at the stage of bail proceeding but in this case the Court did not give any opportunity to the defacto complainant at the time of hearing of bail petition.

Perused the materials on record, petition and Order of the Hon'ble High Court, Calcutta.

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The accused has been implicated u/s 376(3)/354/506 of I.P.C r/w section 4/6/12 of POCSO Act, 2012. After framing of charge, the evidence of witness was started. After completion of evidence of the victim girl and the defacto complainant the accused preferred an application for bail on 23.02.2023, the day when defacto complainant appeared before the Court and she was cross examined. The copy of bail application was duly served upon learned Special P.P. On 27.02.2023 this Court after observing evidence of the victim girl and her mother (Defacto complainant) and vulnerable witnesses have already been examined, considering the detention of the accused and considering the age of the accused, was pleased to enlarge the accused person on bail by imposing certain condition directing the accused not to enter into jurisdiction of Thakurpukur P.S where victim resides. On 17.04.2023 defacto complainant again appeared before this Court and filed an application for supplying copy upon her as per section 207 of Cr.P.C. Copy has been supplied with the victim and date was fixed for evidence. On 13.06.2023 PW-3 being the father of the victim was examined and cross examined. On 14.06.2023 PW-4 being a maternal aunt of the victim was examined and cross examined in full. On 13.06.2023 the defacto complainant filed a petition against the accused for violation of condition of bail. The Court accordingly called for report from the I.O of Thakurpukur P.S and O.C, Behala P.S. After perusing the report of the I.O the then Special Court found that the accused did not violate the condition of bail. After being enlarged on bail the accused has not violated the condition of bail.

During hearing learned Special P.P though raised objection but she submitted that on the date of filing of bail application defacto complainant was present in the Court and on that date cross examination of defacto complainant was completed.

It further appears that victim girl, her parents, maternal aunt have been examined. On 15.06.2023 i.e. the last day of the schedule of trial brother-in-law of the mother of the victim did not appear.

On careful perusal of order of the Hon'ble High Court it appears that the Hon'ble Court in para no.10 has specifically observed as followed : "...It is true that mother and the minor had already been examined and their depositions were on record. Order of the trial court, however, does not

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advert to the contents of their depositions. It merely records that they have been examined thereby meaning the vital witnesses having been examined cannot be won over. But the Court did not consider the nature of their deposition which corroborates the grave allegation of penetrative sexual assault on a minor. Had the informant been notified, she would have been present during the hearing and assisted the Court by highlighting the quality of evidence on record supporting the accusation. Failure to ensure the presence of the informant is a breach of fair procedure and has denied access to justice to the victim. This vitiates the order granting bail.”

This day the defacto complainant raised strong objection against the prayer for bail. The learned lawyer of the defacto complainant namely Mr. Sumit Kumar Dey who happens to her maternal uncle as it appears from his submission, has submitted before the Court that victim is still traumatized but no medical report has been submitted before the Court.

Four witnesses which include the victim, the mother of the victim, father of the victim and other have been examined. From evidence it appears that the evidence of witnesses so far examined spoke volume about the alleged incident. Considering all the facts and circumstances I am not inclined to enlarge the accused person on bail. Hence prayer for bail is considered and rejected.

To 11.10.2023 for production of the accused and further order.

At the time of hearing learned lawyer for the accused has drawn the attention of the Court that accused being an aged person has been suffering from different ailments and necessary direction may be given to the Superintendent of the concerned Correctional Home to provide him proper treatment.

Heard. Considered.

The Superintendent of Presidency Correctional Home is directed to provide proper treatment to the accused and submit the report by the date fixed.

As the accused has surrendered before this Court and taken into custody there is no need to put up the case record on 12.03.2024 which was fixed for evidence.

To date i.e. 11.10.2023 for production and further order.

D/C by me
Sd/-Sudipta Bhattacharjee
A.S.J 2nd Court, Alipore
South 24 Pgs

Sd/-Sudipta Bhattacharjee
Addl. Session Judge
2nd Court Alipore

