
(2020) 08 CAL CK 0057

In the Calcutta High Court

Case No : Criminal Misc. Case (Bail Application) (CRM) No. 5326 Of 2020,
C.R.A.N. 3641 Of 2020

Bapi Das.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164
Protection Of Children From Sexual Offences Act, 2012 — Section 27
Evidence Act. 1872 — Section 80

Citation : (2020) 08 CAL CK 0057

Hon'ble Judges : Samapti Chatterjee, J; Bibek Chaudhuri, J

Bench : Division Bench

Advocate : Debasis Kar, Saibal Bapuli, Dutta

Final Decision : Dismissed

Judgement

@JUDGMENT-JUDGMENT

The learned advocate for the petitioner undertakes to affirm and stamp the petition/application as per Rules within 48 hours of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

The application being CRAN 3641 of 2020 is accordingly allowed. It is submitted by the learned advocate for the petitioner that in the FIR, it was alleged that the victim minor girl was ravished by one Himangshu Patra. In course of medical examination the victim stated the name of the said Himangshu Patra as the perpetrator of offence and nowhere, at the initial stage, she took the name of the present petitioner as one of the accused in committing the offence. Even in course of her statement recorded under Section 161 of the Code of Criminal Procedure she implicated only one Himangshu Patra. However, only on July 13, 2020 her statement was recorded under Section 164 of the Code of Criminal Procedure where she stated that the said Himangshu Patra and the present

petitioner committed rape upon her. Therefore, the petitioner was implicated in the instant case.

The learned advocate for the petitioner relies upon Section 27 of the POCSO Act and various other provisions of the Evidence Act including Section 80 of the Evidence Act and submits that the statement made by the victim before the doctor can be treated as a substantial piece of evidence. While a statement recorded under Section 164 of the Code of Criminal Procedure has only a corroborative value and there is contradiction between two statements, the statement recorded by the doctor must prevail.

On this score, the petitioner is entitled to be released on bail. The learned Public Prosecutor in charge on the other hand submits drawing our attention to the statement recorded under Section 164 of the Code of Criminal Procedure. He also submits that the similar argument was advanced on behalf of the petitioner before a coordinate Bench of this Court in C.R.M. 5378 of 2019 but the said coordinate Bench refused the prayer for bail vide order dated July 4, 2019.

We have carefully considered the submissions made by the learned advocates for the petitioner and the State. We have also duly considered the submissions on the point of law made by the learned advocate for the petitioner.

The evidenciary value of the document, viz, the medical examination report and the statement recorded under Section 164 of the Code of Criminal Procedure can be decided and looked into at the time of trial. Practically trial has already been commenced and two witnesses have been examined.

It is needless to say that it is the statement of the witnesses on oath in Court during the trial which matters and not the statements recorded or obtained by the Investigating Officer during the investigation of the case. At this stage, the record shows incriminating materials against the petitioner.

Therefore, we are not in a position to release the petitioner on bail and the prayer for bail is considered and rejected.

The application being C.R.M. 5326 of 2020 is dismissed.