

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1464 of 2022

Raj Kumar Das @ Swapan Das
-Vs-
The State of West Bengal

For the Petitioner: Mr. Ayan Bhattacharya, Adv.,
 Mr. Kunal Ganguly, Adv.,
 Mr. Arunava Ganguly, Adv.,
 Mr. Piyas Choudhury, Adv.

For the State:- Mr. Tanmoy Kumar Ghosh, Adv.,
 Ms. Pritha Paul, Adv.

Heard on: 22 August, 2022.

Judgment on: 15 September, 2022.

BIBEK CHAUDHURI, J. : –

1. By invoking the jurisdiction under Section 482 of the Code of Criminal Procedure the petitioner has challenged an order dated 17th January, 2022 passed by the learned Special Judge, POCSO Act, Barrackpore, North 24 Parganas in POCSO No.57 of 2021 arising out of Naihati Police Station Case No.328 of 2020 under Section 363 of the IPC read with added Sections 366A/368/370/372/373/376/120B of the IPC read with Sections 3/4/5/6/7/8 of the Immoral Trafficking Prevention Act read with Sections 4/6/8/12/17 of POCSO Act.

2. It is pertinent to mention at the outset that on the basis of a written complaint submitted by one Jayashree Biswas alleging, inter alia, that the minor daughter of the above named defacto complainant was missing from her house on and from 2 pm on 6th August, 2020. The defacto complainant conducted search for her daughter at all possible places but failed to trace her out. It was suspected by her that the said minor daughter was kidnapped by some unknown miscreant with some ill intention and motive. A case under Section 363 was registered against unknown miscreants during investigation of the case. The Investigating Officer received a message from the defacto complainant that the victim girl was recovered from a place under the jurisdiction of Polba Police Station under Hooghly Rural District. After recovery a case under Sections 366A/368/370/372/373/376/120B of the IPC read with Sections 3/4/5/6/7/8 of the Immoral Trafficking Prevention Act and Sections 4/6/8/12/17 of the POCSO Act was registered. In connection with the said case the petitioner was arrested and taken into custody on 24th September, 2020. After the victim girl being recovered, her statement was recorded under Section 164 of the Cr.P.C it was ascertained that the victim girl left her house following a quarrel with her mother and took shelter in the matrimonial home of her friend. Subsequently, the mother-in-law of her friend, namely Sonali Biswas and one Rakhi Biswas took her to the present petitioner at Chandannagar. She was forcibly detained by the petitioner in his house. She was subjected to physical and mental torture. The petitioner also committed sexual intercourse with her.

Subsequently, on 26th October, 2021 the Investigating Officer arrested one Mithun Das and one Sabita Das @ Mona on connection with the said case.

3. It is the case of the petitioner that he was detained in custody from 24th September, 2020 in connection with Polba Police Station Case No.143 of 2020 dated 22nd September, 2020. Subsequently, the petitioner was shown arrested in connection with Naihati Police Station Case No.328 of 2020 dated 6th August, 2020. On 7th January, 2022, the petitioner had filed an application under Section 167(2) of the Cr.P.C praying for bail on the ground of custodial detention for more than statutory period of time. It is submitted by the petitioner that in connection with Naihati Police Station Case No.328 of 2020 he was shown arrested on 3rd September, 2021 and the statutory period of 90 days for completion of investigation expired on 20th December, 2021 therefore the petitioner has the statutory right to pray for bail as the investigation is not concluded.

4. It is submitted by Mr. Ayan Bhattacharya, learned Advocate for the petitioner that the petitioner was arrested in connection with Naihati Police Station Case No.328 of 2020 on 3rd September, 2021 therefore statutory period of 90 days for completion of investigation expired on 20th December, 2021 when the Investigating Agency failed to submit charge-sheet within stipulated period of time the petitioner is entitled to default bail.

5. It is also submitted by him that the right to bail under Section 167(2) of the Cr.P.C, first proviso is absolute. It is a legislative commend

and not courts discretion. If the Investigating Officer fails to file charge-sheet before expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. At such stage merits of the case are not to be examined. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. The accused must be offered with an order of bail and he is entitled to be released on furnishing bail bond.

6. Next he takes me to the impugned order dated 17th January, 2022. The learned Special Judge, POCSO Act at Barrackpore rejected the prayer for bail on the ground that the Investigating Officer prayed for extension of time for one month for completion of investigation and such prayer was allowed on 4th January, 2022. The bail petition was filed after 4th January, 2022 and as such the accused cannot be released on bail.

7. Referring to a decision of the Hon'ble Supreme Court in **Bikramjit Singh vs. State of Punjab** reported in **(2020) 10 SCC 616**, it is submitted by Mr. Bhattacharya that the requirement of an application claiming the statutory right under Section 167(2) of the Code is prerequisite for the ground of bail on default. The earlier decisions, for example, **Rakesh Kumar Pal vs. State of Assam** reported in **(2017) 15 SCC 67**, that an application has to be made before the Magistrate for enforcement of the statutory right. But in **Bikramjit Singh** (Supra) it was held by the Hon'ble Supreme Court that the right to be released on default bail is the statutory right of the accused and the court must offer

bail if within the statutory period of time the Investigating Officer fails to file charge-sheet.

8. In **M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2021) 2 SCC 485**, the Hon'ble Supreme Court curled out a distinction between the right of statutory bail available under the Code of Criminal Procedure in case of an offence under the IPC or any other penal provisions and the special statute like NDPS Act. Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 requires that the investigation into offences punishable under Section 19, 24 or 27A under the NDPS Act be completed within a period of 180 days instead of 90 days as provided under Section 167(2) Cr.P.C. Hence the benefit of additional time limit is given for investigating a more serious category of offences. This is accompanied by a further proviso that the said court may extend time prescribe for investigation up to one year if the public prosecutor submits a report indicating the progress of investigation and giving reasons for requiring the detention of the accused beyond the prescribed period of 180 days.

9. In the case in hand the prescribed time limit cannot be extended by any stretch of imagination. A statutory bail cannot be refused on the ground that the Investigating Officer prayed for extension of time for one month for completion of investigation. Therefore, the impugned order dated 17th January, 2022 is per se illegal and liable to be set aside.

10. The learned P.P-in-Charge has filed a police report containing memo of evidence in connection with Naihati Police Station Case No.328 of 2020.

11. I have carefully perused the said report. It is not in dispute that Naihati Police Station Case No.328 of 2020 was registered on 6th August, 2020 under Section 363 of the IPC. Subsequently, other penal provisions under the IPC, Immoral Trafficking Prevention Act and the POCSO Act were added. The petitioner was arrested in connection with Polba Police Station Case No.143 of 2020 dated 22nd September, 2022. He was shown arrested in this case on 7th October, 2021. The Investigating Officer ought to file charge-sheet on 6th January, 2022. Therefore, a statutory right accrued in favour of the petitioner put released on statutory bail. Therefore, an application for bail on behalf of him on 7th January, 2022. The learned Special Judge rejected the said application for bail vide order dated 17th January, 2022. Even on the date of rejection of bail the I.O did not file charge-sheet in connection with Naihati Police Station Case No.328 of 2020 dated 6th August, 2020. Thus, the petitioner acquired a statutory right to be released on bail.

12. For the reasons stated above the impugned order dated 17th January, 2022 is set aside.

13. The instant revision is allowed.

14. The learned trial judge is directed to offer statutory bail to the petitioner with sufficient surety bond on receipt of copy of the order.

15. Parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)