

14.09.2023  
Sl. No.17  
**akd**  
[Rejected]

**C. R. M. (DB) 3351 of 2023**

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 09.08.2023 in connection with Taherpur Police Station Case No.295 of 2022 dated 15.06.2022 under Section 376(AB) of the Indian Penal Code read with Section 6 of the POCSO Act.

And

In Re: ***Nirmal Byapari***

... .. Petitioner

Ms. Minoti Gomes

... .. for the petitioner

Mr. Madhusudan Sur .. Id. Addl. Public Prosecutor  
Mr. Manoranjan Mahata

... .. for the State

1. Perused report of the Public Prosecutor-in-charge. She has stated though the minor victim did not support her statement before Magistrate, the witness was not declared hostile since she admitted she had made statement before Magistrate and was medically treated. Public Prosecutor-in-charge has also referred to the evidence of the de-facto complainant father who stated the written complaint treated as FIR was lodged by him.
2. Public Prosecutor-in-charge has failed to take into consideration the fact neither the contents of FIR nor the statement of the victim before Magistrate are substantive evidence.
3. Deposition of the victim in court is substantive evidence on which conviction may be recorded. Her earlier statement before Magistrate may be used to contradict or corroborate her. When the witness resiled from her earlier statement, it is incumbent on the part of the prosecution to expose the falsehood in her deposition by declaring her hostile and confront with her earlier statement.

4. We fail to understand how this basic principles of law are unknown to the Public Prosecutor-in-charge who is handling sensitive cases involving sexual violence on minors.
5. Under such circumstances, we are constrained to direct the learned Legal Remembrancer to remove the Public Prosecutor-in-charge from the panel of Public Prosecutors. She shall be relieved of her responsibility to conduct the present case and case shall be handed over to another special Public Prosecutor who shall conduct the same in accordance with law.
6. Let a copy of this order be communicated to the learned Legal Remembrancer, Government of West Bengal, Public Prosecutor-in-charge and Public Prosecutor of the district concerned for due compliance.
7. We have considered the materials on record. We are of the opinion the minor had been won over by the petitioner. Under such circumstances, to avoid further malafide influence on trial, we do not consider it prudent to release the petitioner on bail at this stage.
8. The application for bail is thus rejected.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**