

CRM (DB) 2892 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/Section 483 of the BNSS in connection with **Sagarpara Police Station** Case No. **220 of 2023** dated **22.07.2023** under Sections **376/511/323/506** of the Indian Penal Code and Sections 8/12 of the POCSO Act.

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In the matter of : Raj Kumar Mondal @ Rajkumar Mondal

.... Petitioner.

Mr. Soumik Ganguly,
Mr. Tapodip Gupta,

... For the Petitioner.

Mr. Iqbal Kabir,
Mr. Aslam Parvez,

... For the State.

Mr. Arnab Chatterjee,
Mr. A. Rahaman,

....for the defacto complainant.

Order dictated by Arijit Banerjee, J.:

1. The report of the Judge, Special POCSO Court, Berhampore, Murshidabad dated December 10, 2024 has been placed before us. From the said report as also from the order dated September 2, 2023, we find that there is no dispute that on the date of the commission of the alleged offence the petitioner was aged 17 years 10 months 26 days i.e., on the date of commission of the offence, he was a JCL (juvenile in conflict with law). Hence, the Special POCSO Court ought not to have taken up the matter. Instead, the Court ought to have sent the matter to the Juvenile Justice Board in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for conducting a preliminary assessment with regard to the JCL's mental and physical capacity to commit the alleged offence, and ability to understand the

consequences of the offence and the circumstances in which he allegedly committed the offence. This was admittedly not done.

2. Hence, we dispose of this application by directing the Special POCSO Court to send the matter to the Juvenile Justice Board for conducting a preliminary assessment as contemplated by Section 15 of the POCSO Act and then take up the matter from there depending on the report of the Juvenile Justice Board.

3. The matter shall be sent to the Juvenile Justice Board within seven days from the date of communication of this order by the parties to the learned Trial Court.

4. The Board is requested to complete the exercise of conducting preliminary assessment within 15 days from the receipt of the matter from the learned Trial Court.

5. CRM (DB) 2892 of 2024 is, thus, disposed of.

6. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)