

11.04.2025
Item no.15
Court No.39
ss

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION**

C.R.M.(DB) 831 of 2025

In Re:- An application under Section 439 of the Code of Criminal Procedure 1973/Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Medinipur All Women Police Station Case No.67 dated 25.06.2023 under Sections 376(3)/506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

And

In Re : Suratha Kumar Malik

.... Petitioner

Ms. Jhuma Sen
Mr. Samsul Laskar
Ms. Swastika Chatterjee

....for the petitioner

Mr. Soumik Ganguly
Ms. Afreen Begum

..... for the State

Mr. Soumyajit Das Mahapatra

... for *de facto* complainant

Learned Advocate for the petitioner submits that previously on 10th January, 2024 in CRM (DB) 60 of 2024 while rejecting the bail prayer of the petitioner, this Court passed orders requesting the trial court to conduct the trial with utmost expedition keeping in mind the mandate under Section 35(2) of the POCSO Act and conclude the same at an early date preferably within six months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties. Despite such direction till date only 12 out of 20 witnesses have been examined and the prosecution is yet to conclude the examination of the prosecution witnesses.

The petitioner is in custody since 25th June, 2023. Relying on the two decisions of Hon'ble Supreme Court passed in (i) ***Prabir Purkayastha -versus- State (NCT of Delhi)***, reported in ***(2024) 8 SCC 254*** and (ii) ***Vihaan Kumar -versus- State of Haryana and Another***, reported in ***2025 SCC OnLine SC 269*** she submits that the arrest of the petitioner was illegal and bad in law since the ground of arrest was not disclosed to the petitioner which is violative of principles of natural justice and provisions of law. Furthermore, the petitioner and the father of the victim are Assistant Professors in Vidyasagar University and out of professional conflict and bitterness the petitioner has been falsely implicated in this case. She seeks for enlargement of the accused-petitioner on bail.

On the contrary, opposing the prayer for bail learned Advocate for the State submits that the ground of arrest was duly communicated to the petitioner. The aforesaid issue, that the ground of arrest was not disclosed to the petitioner, was never pressed into service in earlier bail application. Further there are serious allegations against the petitioner of commissioning sexual offence upon a minor girl of tender age, who happens to be a child of his colleague which is evident from her statement as well as her deposition in court. He informs the court that 12 out of 20 witnesses have already been examined and trial has progressed considerably. In light of his above submission, he pray for dismissal of the bail application.

Learned Advocate for the *de facto* complainant submits that the evidence of the victim clearly implicates the petitioner of

his involvement in such heinous sexual offence. He indicates that the judgements in *Prabir Purkayastha (supra)* and *Vihaan Kumar (supra)* has a prospective effect so far as the communication of the ground of arrest in writing is concerned and as such, the judgements having been passed in the year 2024 and 2025 has got no consequence so far as the arrest of the accused-petitioner is concerned, which has been made in the year 2023. He also seeks for dismissal of the bail application.

In reply, learned advocate for the petitioner submits the cited decisions of the Hon'ble Apex Court has considered the earlier decisions and therefore it cannot be said that the State on the date of arrest was not under statutory obligation to follow the mandate of law laid down in the earlier decisions as well as the subsequent ones of the Hon'ble Apex Court.

Perused the case diary and materials on record.

At the outset it is found the investigating agency has noted in the case diary that the ground of arrest has been informed to the petitioner. Therefore, the argument advanced on behalf of the petitioner of non-disclosure of grounds of arrest to the petitioner is violative of the provisions of law, relying on the decisions in *Prabir Purkayastha (supra)*, and *Vihaan Kumar (supra)* does not stand to reason.

The material on record shows that the instant case involves a sexual offence against a minor child of a tender age of 9 years. The petitioner was a colleague of the father of the victim child. The principle allegation in the written complaint is that

the minor child had gone to play with the daughter of the petitioner and when the victim girl entered in the bathroom taking advantage of the situation the offence has been committed by the petitioner. Such fact has been stated by the victim in her statement recorded before the Magistrate as well as in her deposition in Court. Such being the position considering the gravity of the offence this Court is not inclined to enlarge the petitioner on bail.

In the earlier bail application being CRM (DB) 60 of 2024 the trial court was requested to expedite the trial as per mandate under Section 35(2) of the POCSO Act and conclude the same at an early date preferably within six months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

It is informed by the learned Advocates for the State as well as the petitioner that 12 out of 20 witnesses have been examined and the next date for examination of the prosecution witnesses is fixed on 16th June, 2025.

Accordingly, learned trial court is directed to conduct the trial with utmost expedition and conclude the same at an early date.

Prosecution is directed to produce the witnesses for their examination as per schedule fixed by the learned trial court.

Accordingly, the prayer for bail of the petitioner is rejected.

The application for bail being **CRM (DB) 831 of 2025** stands dismissed.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)