

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.R.M. (DB) 874 of 2025
Sukumar Chakraborty
versus
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Milon Mukherjee, Senior Advocate Mr. Aritra Bhattacharya, Advocate
For the State	: Mr. Rudradipta Nandi, Advocate Mr. Bibhaswan Bhattacharya, Advocate Mr. S. Kundu, Advocate
For the victim girl	: Mr. Mit Guha Roy, Advocate
For the West Bengal Commission for Protection of Child Rights	: Mr. Debashis Banerjee, Advocate Mr. Rakesh Jana, Advocate
Heard on	: 05.05.2025
Judgment on	: 14.05.2025

Bivas Pattanayak, J. :-

1. This is an application for bail under section 439 of the Criminal Procedure Code (*hereinafter referred to as 'CrPC'*)/ Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Haridevpur Police Station Case no. 123 of 2024 dated 8th March, 2024 under sections 376(2)(d)(l)(n)/ 376AB/ 376C/506 of the Indian Penal Code (*hereinafter referred to as 'IPC'*) read with sections 6/17 of Protection of Children from Sexual Offences Act (*In short 'POCSO Act'*) and Section 92(d) of the Rights of Persons with Disabilities Act.

2. On the basis of a complaint lodged by the Chairperson of WBCPCR a Zero FIR was registered at Ultadanga Police Station and subsequently transferred to the jurisdictional Haridevpur Police Station. The brief fact of the prosecution case is that the Principal of VW blind school (the petitioner herein) sexually abused the victim and also committed penetrative sexual assault upon her within the premises under his control, multiple times since her childhood taking advantage of the vulnerable conditions and limitations of the victim girl and completely misused his position. It is also alleged that the other accused being the founder member & Secretary of VW has abetted the offence by aiding the principle accused. Upon such complaint, Haridevpur Police Station case no. 123 of 2024 came to be registered and investigation was set into motion. The petitioner was arrested on 3rd April, 2024 and since then he is in custody.

3. Mr. Milan Mukherjee, learned Senior advocate appearing for the petitioner at the very outset submitted that as per the prosecution case alleged offence was committed in the year 2010 i.e. 14 years ago. Chargesheet is submitted for commission of offences under the POCSO Act which came into existence only in the year 2012. The Act does not have a retrospective effect to take into its fold any offence of such nature committed prior to coming into force of the said Act. Therefore, the petitioner cannot be held liable for commission of offence under the POCSO Act.

Further chargesheet has also been submitted under section 376 AB of the IPC which came into force in the year 2018 *vide* Criminal Law (Amendment) Act, 2018. The IPC being a substantive Act cannot have a

retrospective effect as well. Thus the petitioner cannot be charged with offence under Section 376AB of the IPC.

The victim girl at the material time in the year 2010, which is about 14 years back, did neither lodge any complaint nor any information of the alleged offence was revealed to anybody by her. As per section 21(1) of the POCSO Act person failing to report of commission of an offence ought to be punished with imprisonment of either description which may extend to six months or with fine or with both. In view of such provision, the victim girl and his parents are liable to be charged under the said provisions.

Moreover, there is substantial delay in registering the complaint which has not been validly explained and therefore it creates a suspicion in the prosecution case *per se* and vitiates the same. Further the victim girl did not attempt to escape and waited for 14 years before filing the complaint which also cast serious doubt on the credibility and the motivation behind the accusation.

The petitioner is 100% visually impaired person and falls within the definition of a '*person with benchmark disability*' as outlined in the Rights of Persons with Disabilities Act. On the other hand, the victim is partially blind having lost vision in one eye. Such aspect raises a doubt as to how the petitioner being fully blind could have carried out sexual offence upon someone with partial vision. Moreso, the petitioner who himself is 100% disabled cannot be charged under section 92(d) of the Rights of Persons with Disabilities Act.

The complaint has been lodged at the inducement of one Saibal Guha, who is an expelled member of the NGO with whom the victim had grown

relationship suggesting a deliberate attempt on the part of the victim to malign the accused-petitioner.

Moreover, from the admit card issued by the West Bengal Board of Secondary Education (WBBSE) victim's date of birth is 5th June, 1994 and thus at the time of the incident in the year 2010 she was approximately 18 years 6 months old and accordingly POCSO Act cannot be applicable in this case. As per section 34(2) of the POCSO Act the issue regarding the date of birth of the victim needs to be decided at the first instance which has not been done in the present case.

The medical examination of the victim was conducted on 3rd May, 2024, after 2 months, which is beyond the prescribed period (within 24 hours) as per provision of section 164 (A) of CrPC.

The FIR was registered on 8th March, 2024 and chargesheet is submitted on 5th June, 2024 which is beyond the prescribed period of two months provided under section 173(1A) of CrPC for completion of the investigation in cases registered under section 376, 376AB and 376C.

The bail prayer of the petitioner was rejected by this court in CRM (DB) 3336 of 2024, however, an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more material, further developments and different considerations. To buttress his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Babu Singh and Others versus State of U.P.***¹

Furthermore, the petitioner is in custody for 1 year 15 days without there being considerable progress in trial and the possibility of early conclusion

¹ (1978) 1 SCC 579

of trial is bleak and therefore there is violation of the right of petitioner for speedy trial enshrined under Article 21 of the Constitution of India.

Last but not the least he submitted that since the investigation has been completed upon submission of chargesheet, further detention of the petitioner would not serve any fruitful purpose.

In light of the aforesaid submissions, he sought for enlargement of the petitioner on bail.

4. Mr. Rudradipta Nandi and Mr. Bibhaswan Bhattacharya, learned advocates for the State submitted that the statement of the victim clearly implicates the petitioner of his involvement in the alleged of sexual assault and rape on the victim for a considerable period of time on several occasions. The date of birth of the victim as per previous school records is 5th July, 1996. The date of birth appearing in the WBBSE admit card is one that is provided by the institution i.e. VW and is manipulative and therefore cannot be taken to be sacrosanct. In previous application also this issue was raised and upon due consideration the bail prayer of the petitioner was rejected. The materials suggest that the petitioner misusing his authority has sexually abused the victim when she was of a tender age. Not only the statement of victim girl but statement of other girls also reveal of sexual exploitation of minor girls in the institution by this petitioner. In light of the aforesaid submissions, they sought for dismissal of the bail application.

5. Mr. Mit Guha Roy, learned advocate for the victim girl submitted that the allegation against the petitioner pertains to sexual exploitation of the victim in the institution of which he is the principal. The petitioner has

misused his authority in sexually exploiting the victim repeatedly taking advantage of his authority. The allegations are grave one. He also prayed for dismissal of the bail application.

6. Mr. Debasis Banerjee, learned advocate appearing for West Bengal Commission for Protection of Child Rights (WBCPCR) submitted that on the basis of complaint by the Chairperson of the Commission the present case has been initiated. The allegations of the victim are of sexual exploitation by the petitioner at the institution i.e. VW during her stay thereat. Further investigation is going on and there is primary revelation of misappropriation of funds against the petitioner. He sought for rejection of the bail application.

7. Mr. Mukherjee, learned Senior advocate in reply submitted that the further investigation has got nothing to do with the offences with which the petitioner is charged with.

8. Previously the bail prayer of the petitioner was rejected on 4th December, 2024 by a Division Bench of this Hon'ble court in CRM (DB) 3336 of 2024. This is subsequent application. In view of the decision of Hon'ble Supreme Court in *Babu Singh (supra)*, an application for bail is maintainable at a later point of time upon more details, further developments and different circumstances. Bearing in mind the aforesaid proposition I proceed to decide this application.

9. It has been strenuously argued on behalf of the petitioner that POCSO Act would not apply to the facts of this since the allegations are of incident happening in the year 2010 when the Act did not come into existence. Such issue was raised by the petitioner in the earlier bail application and

the Court observed that this is a point which the petitioner will be at liberty to urge before the trial court. In view of such observation of this court it would not be proper to consider and decide an issue which has already been considered in the earlier application.

10. It has also been pressed into service on behalf of the petitioner that since Section 376 AB of the IPC came into force in the year 2018 *vide* Criminal Law (Amendment) Act, 2018 it cannot be applied to this instant case where the allegations pertain to the year 2010. Again, this is a point which the petitioner may agitate before the trial court at an appropriate stage.

11. The other aspect urged on behalf of the petitioner that it is the victim who has not informed of the incident and therefore as per section 21(1) of the POCSO Act she should be punished. Such ground in the opinion of this court has a little bearing so far as the consideration of bail prayer of the petitioner is concerned.

12. It has vociferously argued on behalf of the petitioner that there is substantial delay in registering the complaint which has not been validly explained and, therefore, it creates a suspicion on the prosecution case *per se* and vitiates the same. It is not in dispute that the complaint has been made after a considerable period. Be that as it may, consequence of such delay on the prosecution case may be decided in trial.

13. Argument has also been advanced that the petitioner being 100% visually impaired person cannot commit such offence. Such circumstances can only be decided in trial. Further whether charges under section 92(d)

of the Rights of Persons with Disabilities Act lies against the petitioner may be urged before the trial court.

14. It is urged on behalf of the petitioner that from the admit card issued by the West Bengal Board of Secondary Education (WBBSE) the date of birth of the victim is 5th June, 1994 and thus at the time of the incident in the year 2010 she was approximately 18 years 6 months old. On the other hand, the prosecution has drawn the attention of this court to a document issued by the previous school of the victim at page 102 of the case diary which records the date of the birth of the victim as 5th July, 1996. There may be some controversy in the date of birth of the victim. However, whether the offences under the POCSO Act applies in this case may be decided in trial.

15. Issues have in raised regarding delay in medical examination of the victim and in submission of charge sheet. The consequence as urged on behalf of the petitioner may well be considered in trial.

16. The ground of false implication due to expulsion of one Saibal Guha from the membership of the NGO has been considered in the earlier bail application and nullified.

17. Upon going through the statement of the victim girl recorded before the Magistrate it is found that she has clearly implicated the petitioner. The statement of other victim girls also inculcates the petitioner. On the basis of the materials on record and bearing in mind the nature and gravity of the offence, I am not inclined to grant bail to the petitioner.

18. Accordingly, the bail prayer is rejected.

19. It is informed by the learned advocates that consideration of charge is awaited before the trial court. Accordingly, trial court is directed to expedite the aspect of consideration of charge.

20. The application being **C.R.M. (DB) 874 of 2025** stands dismissed.

(Bivas Pattanayak, J.)