

08.05.2025
Item No.01.
Daily List
Court No.39
Mithun

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

CRM (DB) 1012 of 2025

In re : An Application under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 corresponding to Section 439
of the Code of Criminal Procedure, 1973 in connection with
Hanskhali Police Station Case No.573 of 2024 dated
09.08.2024 under sections 64/78/351(2)/3(5) of the Bharatiya
Nyay Sanhita, 2023 and sections 6/14/15 of the Protection of
Children from Sexual Offences Act, 2012, corresponding to G.R.
Case No.90 of 2024 pending before the said learned Court.

-And-

In the matter of : Joyatu Mondal

... Petitioner

Mr. Anirban Tarafdar
Mr. Souma Bhattacharya,
Mr. Atanu Bhattacharya,
Ms. Rupsa Ganguli,
Mr. Sayak Kumar,
Ms. Anju Barik,
Mr. Debjit Mukherjee

..... for the petitioner

Mr. Debasish Roy, Ld.P.P.
Mr. Arindam Sen,
Ms. Pushpita Saha

... for the State

Mr. Manabendranath Banerjee,
Ms. Tapasi Das

... for the *de facto* complainant

The Investigating Officer is present in Court. He files his
explanation in compliance to the order dated 8th May, 2025,
which is taken on record.

Learned Advocate for the petitioner submits that the
petitioner at the time of incident was a juvenile. The grounds of
arrest has not been communicated to the petitioner in

compliance to the decision of the Hon'ble Supreme Court passed in ***Prabir Purukayastha -versus- State (N.C.T. of Delhi)***, reported in ***(2024) 8 SCC 254***. Relying on the decision of the Hon'ble Supreme Court passed in ***D.K. Basu -versus- State of West Bengal***, reported in ***AIR 1997 SC 610***, he submits that at the time of arrest of the arrestee the police officer has to prepare the memo of arrest and such memo shall be attested by at least one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made and it shall also be countersigned by the arrestee and shall contain the time and date of arrest. Though the arrest memo has the counter signature of the arrestee but it does not have the signature of any member of the family of the arrestee or any respectable person of the locality which is an infraction of the proposition as laid down by the Hon'ble Apex Court.

The learned Public Prosecutor submits that as far as the issue relating to informing the grounds of arrest is concerned, the same was directed in respect of proceedings initiated by the Enforcement Directorate where the attachment of properties of the accused were involved. He informs the Court that the question whether in all cases the grounds of arrest are to be informed is under consideration before the Hon'ble Supreme Court in ***Mihir Rajesh Shah -versus- The State of Maharashtra & Anr [Special Leave to Appeal (Crl) No. 17132/2024]***, the decision of which is reserved by the Hon'ble Supreme Court. However, he candidly submits that as the arrest memo clearly shows that the dictum of Hon'ble Apex Court in

D.K. Basu (supra) of making arrest in presence of at least one witness has not been followed by the Investigating Officer, rule has to be issued against him and at the same time direction be issued to the appropriate authority to initiate a disciplinary proceedings against the said officer. He also indicates that the accused in the present case be released since the arrest is *per se* illegal. The grant of bail to the accused would not be the correct recourse as the detention appears to be illegal.

So far as the issue regarding the intimating/informing the grounds of arrest to the accused at the time of arrest is concerned, since the aspect has been reserved by the Hon'ble Supreme Court as has been informed by the learned Public Prosecutor in *Mihir Rajesh Shah (supra)*, this Court recuse from making any observation in this regard.

Upon perusal of the memo of arrest, it is found that the Column No.10 "*signature of the witness (either a member of family) or a respectable person of the locality*" is kept blank. Needless to mention that in the forwarding report dated 10th August, 2024, the Investigating Officer while producing the accused has stated before the learned Trial Court that the accused has been arrested after observing all legal formalities.

It would be profitable to reproduce the relevant Paragraph of the decision of Hon'ble Supreme Court in *D.K. Basu (supra)* as hereunder :-

"36(2). That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest."

From the aforesaid materials, it is found that there is a clear infraction of the direction passed by the Hon'ble Apex Court in *D.K. Basu (supra)*. The investigating officer has primarily failed to satisfy his action of non-observation of the direction of Hon'ble Apex Court.

Accordingly, the petitioner be released from the custody forthwith after observing all legal formalities.

Let Rule be issued against the Investigating Officer, Dipak Kumar Malakar, S.I. of Police, attached to Hanskhali Police Station, Ranaghat Police District to show cause for not observing the formalities required for arrest of the accused in view of the decision of Hon'ble Apex Court in *D.K. Basu (supra)* on the returnable date.

Rule is made returnable on 27th June, 2025.

The Superintendent of Police, Ranaghat Police Division is directed to take appropriate steps for initiation of disciplinary proceedings against the Investigating Officer, Dipak Kumar Malakar, S.I. of Police, attached to Hanskhali Police Station, Ranaghat Police District in accordance with law.

Now coming to the other aspect, which has been raised in the present bail application is of juvenility of the accused. It has been submitted by learned Advocate for the petitioner that at the time of incident, the petitioner was a juvenile. However, such plea has not been raised before the learned Trial Court. Liberty is granted to the petitioner to file appropriate application before the learned Trial Court for determination of the juvenility of the petitioner in accordance with law at appropriate stage.

With the aforesaid observations, the bail application is disposed of.

Let copy of the order be forwarded to the Superintendent of Police, Ranaghat Police Division for information and necessary action.

The personal appearance of the Investigating Officer is dispensed with.

(Bivas Pattanayak, J.)