

21.05.2025
Item no.8(DL)
Court No.39
srm
(Rejected)

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

C.R.M.(DB) 1033 of 2025

In Re:- An application for bail under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023/Section 439 of the Code of
Criminal Procedure, 1973 in connection with POCSO Case
No.202/2022 arising out of English Bazar Women Police Station
Case No.253 of 2022 dated 12.12.2022 under Section 506 of the
Indian Penal Code, 1860 read with Sections 4/17 of the
Protection of Children from Sexual Offences Act, 2012, pending
before Court of learned Additional District and Sessions Judge,
2nd Court, Special Judge, POCSO Court, Malda;
And

In Re : Ram Mandal

.... Petitioner

Mr. Avinava Patra,
Mr. Dipayan Kundu,
Mr. Agnik Maulik

...for the Petitioner.

Mr. Shiladitya Banerjee,
Mr. Ratul Ghosh

... for the State.

Affidavit of service filed on behalf of the petitioner is taken
on record.

State files service report which is also taken on record.

Learned Advocate for the petitioner submits that there are
glaring inconsistencies in the prosecution case. The medical
evidence does not corroborate the facts narrated by the victim
which is most vital so far as the prosecution under the POCSO
Act is concerned. To buttress his contention, he relies on the
decision of this Court passed in ***Litan Sarkar versus State of
West Bengal*** reported in ***2020 0 Supreme(Cal) 97*** and a
decision of the Hon'ble Allahabad High Court passed in ***Rakesh***

Kumar @ Dariya versus State of U.P. Thru. Secy. Deptt. Of Home Lucknow and 3 Others reported in **2024 0 Supreme(All) 660**. Relying on the decision of the Hon'ble Supreme Court passed in **Deshraj @ Musa versus State of Rajasthan** reported in **2024 Supreme(Online)(SC) 10009** he submits that any perception of threat being effected upon the victim cannot be a ground for dismissal of the bail application. The *de facto* complainant, mother of the victim in her cross-examination has stated that the victim was not taken to any doctor by her which clearly improbabilises the case of the prosecution. One of the eye-witnesses to the occurrence has stated in his statement before the Magistrate that the accused persons intended to cause rape and thus no such rape took place as stated by the victim. Furthermore, the medical examination report shows that there are no such injuries sustained by the victim and the sexual assault has been ruled out. The petitioner is in custody for more than two years without there being considerable progress in trial. The co-accused has been granted bail. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that the statement of the victim and her deposition in court clearly implicates the petitioner. He seeks for dismissal of the application.

Despite service, none appears on behalf of the *de facto* complainant.

Perused the case diary and the materials on record.

The victim in her statement before the Magistrate has implicated this petitioner of his involvement in the alleged offence which is also stated by her during her examination in court. The question whether medical evidence corroborates the victim's statement and its consequence upon the prosecution case may be assessed in trial. Considering the materials as indicated above, and the nature and the gravity of the offence, I am not inclined to grant bail to the petitioner.

The decision in *Litan Sarkar (supra)* is passed in appeal against conviction upon full-fledged trial.

In *Rakesh Kumar @ Dariya (supra)*, the victim tested positive for pregnancy. However, the Court found that medical report and the timing suggested that conception could not have occurred within the alleged time frame which discrepancy led the Court to the question of credibility of the prosecution case. The aforesaid fact is dissimilar from the case in hand and, accordingly, does not apply to the present case.

The decision in *Deshraj @ Musa (supra)* is also factually distinguishable.

The learned Trial Court is directed to expedite the trial to the fullest extent and conclude the same at an early date without granting unnecessary adjournments to either of the parties.

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

Prosecution is directed to produce witnesses on the date scheduled for examination of the witnesses.

Parties are directed to cooperate in the trial for examination of the witnesses.

The application for bail being ***CRM (DB) 1033 of 2025*** stands dismissed.

(Bivas Pattanayak, J.)