

11.04.2025
Item No.19.
Daily List
Court No.39
Mithun

CRM (SB) 40 of 2025

In re : An Application for bail under Section 439 of the Code of Criminal Procedure, 1973 corresponding to under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with POCSO Case No.301 of 2024 arising out of Rahara Police Station Case No.374 of 2024 dated 29.11.2024 under Section 8 of the Protection of Children from Sexual Offences Act and subsequently Charge Sheet submitted under Section 8 of Protection of Children from Sexual Offences Act.

-And-

In the matter of : Nurul Mallick

... Petitioner

Mr. Moyukh Mukherjee,
Mr. Abhijit Singh,
Mr. Santu Das,
Mr. Rohit Guha Thakurata

... .. for the petitioner

Ms. Rituparna Ghosh

...for the de-facto complainant

Mr. Arijit Ganguly,
Mrs. Manasi Roy

... ...For the State

Learned Advocate for the petitioner submits that he is languishing in custody for 133 days. Out of prior enmity, the petitioner has been falsely implicated in this case. The mother of the victim has refused for conducting medical examination of the child. Relying on a decision of this Court passed in **Gamo Hossain-versus- The State of West Bengal (C.R.A.293 of 2019)**, he submits that medical evidence is vital for establishing an offence under the POCSO Act. As the prosecution case is not supported by medical evidence, it is unworthy of being accepted.

Moreover, since charge-sheet has already been submitted, there is no requirement for further detention of the petitioner is custody. To buttress his contention relies on a decision of as court in ***Ujjal Kumar Pandey @ Munna Pandey @ Ujwal Kumar Pandey [C.R.M.(SB) 129 of 2024]***.

Learned Advocate for the State submits that the statement of the victim clearly implicates the petitioner of his involvement in the alleged offence. The statements of other two eye-witnesses to the occurrence and statement of the mother of the eye-witnesses support the facts stated by the victim. In view of the above, he seeks for dismissal of the application.

Learned Advocate for the *de facto* complainant opposing the prayer for bail, submits in the similar fashion.

Perused the Case Diary and materials on record.

The victim is of a tender age of 6 years. In her statement, she clearly implicates the petitioner of his involvement in the alleged offence. The decision of *Gamo Hossain (supra)* is factually distinguishable and has been passed in an appeal against an order of conviction under Section 10 of POCSO Act made upon a full-fledged trial. The decision in *Ujjal Kumar Pandey @ (supra)* is also distinguishable. Considering the above materials and gravity of the offence, I am not inclined to enlarge the petitioner on bail.

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

The application for bail being **CRM(SB) 40 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.)