

13.05.2025
Item No.04.
Daily List
Court No.39
Mithun
(Rejected)

CRM (M) 28 of 2025

In re : An Application for bail under Section 439 of the Code of Criminal Procedure, 1973 read with Section 483 of Bharatiya Nagarik Surakasha Sanhita, 2023 in Criminal Misc. Case No.356 of 2025 in Special T.R. Case No.41 of 2024, arising out of Sankrail Police Station Case No.155/24 dated 23.02.24, presently pending before the Learned Judge, Special (POCSO) Court, Howrah under Section 4 of Protection of Children from Sexual Offences Act, thereby rejecting the prayer for bail of the petitioner in connection with the aforesaid case.

-And-

In the matter of : Nitish Yadav @ Nitish Kumar Yadav

... Petitioner

Mr. Milon Mukherjee, Sr. Adv.,
Mr. Somopriyo Chowdhury,
Mr. Dipayan Dan

...for the petitioner

Ms. Afreen Begum

...for the *de facto* complainant

Mr. Binoy Kumar Panda,
Mr. Soumadip Saha

... ..For the State

Learned Senior Advocate appearing for the petitioner at the outset points out that the FIR has been registered on 23rd February, 2024, however, Column 3(a) of formal FIR does not mention the date of occurrence which is a *sine quanon* for initiation of any criminal proceedings. The age of the victim is disputable. The Investigating Agency during investigation has not seized proper documents in support of the age of the victim. The maternal uncle of the victim (P.W.3) deposed in Court that the victim was admitted to school by showing her polio certificate. However, such polio certificate cannot under the

Juvenile Justice Act be considered as a proper document for determination of age of the victim. The victim also failed to indicate the school in which she used to study. The petitioner is in custody since 1st March, 2024 and already all four vulnerable witnesses have been examined. He also indicates that as per the medical report, the last date of menstruation is 10th January, 2024 and the evidence of the victim shows that she has no connection with the accused after December, 2023, which raises doubt of petitioner's involvement in the alleged offence. He seeks for enlargement of the petitioner on bail.

Learned Advocate for the State submits that the victim implicates the petitioner in her statement before the Magistrate as well as in her evidence. There may have been certain discrepancies but that does not wipe out the entire case of the prosecution. He seeks for dismissal of the application.

Learned Advocate for *de facto* complainant also opposes the prayer for bail and submits that the victim as per the documents collected during the course of investigation was 17 years of age at the time of incident. The mother of the victim is uneducated person and as such her evidence might have certain discrepancies but that has hardly any effect on the prosecution case. The victim has implicated the petitioner in her evidence in Court. She also seeks for dismissal of the bail application.

Perused the case diary and the materials on record.

It is a fact that in the form under Section 154 CrPC, i.e. formal FIR there is no mention of the date of occurrence. The victim in her statement before the attending Doctor has stated

that she had relationship with the petitioner for three months and during such period she had physical relationship with the petitioner twice. Thus, the non-mentioning of the date of occurrence does not *per se* vitiates the entire prosecution case and it should be decided in the light of other evidence which has been adduced in Court. Further, the victim in her deposition in Court stated that she was 17 years of age at the relevant point of time. The Investigating Agency during the course of investigation has collected the Aadhar Card and the last attended school certificate of the victim which records the date of birth as 8th July, 2006. Whether such evidence before the Court is to be accepted should be decided in trial. The victim in her deposition in Court implicates the petitioner. She became pregnant due to her physical relationship with the petitioner. Considering the above materials and the gravity of the offence, I am not inclined to grant bail.

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

It is made clear that the observation made hereinabove is only for the sake of disposal of this bail application.

It is informed by the State that six witnesses remain to be examined on behalf of the prosecution.

In light of the above, the Trial Court is directed to expedite the Trial and conclude the same at an early date without granting unnecessary adjournments.

Parties are directed to co-operate in trial at the time of examination of the witnesses.

Parties are at liberty to communicate this order to the learned Trial Court.

The application for bail being ***CRM(M) 28 of 2025*** stands dismissed.

(Bivas Pattanayak, J.)