

17.04.2025
Sl No.4
Ct. No.39
ss
(Allowed)

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

CRM (M) 7 of 2025

In Re:- An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Serampore Police Station Case No.599 of 2024 dated 13.10.2024 under Sections 137(2)/64/351(2) of BNS, 2023 read with Section 6 of POCSO Act, 2012 and subsequently charge sheet was submitted under sections 137(2)/64/351(2)(3)/140(3)/3(5) of the Bharatiya Nyaya Sanhita, 2023 read with section 4 of the POCSO Act, 2012.

And

In Re : XXX

.....Petitioner

Mr. Promit Bag
Mr. Anuj Mishra
Mr. Rhiddhiman Mukherji
Mr. Saujanya Pattanayak

.....for the Petitioner

Ms. Amita Gaur
Mr. Nirapam Dhali

.....for the State

Mr. Asim Karmakar

... for the *de facto* complainant

Service report filed on behalf of the State is taken on record.

It is found that service has been effected upon the *de facto* complainant/victim.

Learned Advocate for the petitioner also places a copy of letter dated 4th April, 2025 annexing the postal receipts showing the notice has been sent to the *de facto* complainant. The said letter is taken on record.

Learned Advocate for the petitioner submits that both the victim and the petitioner had love affairs and the victim out of

her own accord left with the petitioner. She also returned back to her own home alone. As such, there is no case of kidnapping made out by the prosecution. Referring to the statement of the victim recorded under Section 164 of the Cr.P.C. he submits that there are no allegations of any penetrative sexual assault to attract offence under Section 4 of the POCSO Act. The petitioner is a student of *Techno India* University and is languishing in custody for more than 4 months. Relying on a decision of Hon'ble Supreme Court in ***The State of Himachal Pradesh –versus- Rajesh Kumar @ Munnu (Criminal Appeal No.2097 of 2014)*** he submits that since the victim has refused to undergo medical examination, it raises a negative inference against her. Moreover, he also indicates that the charge-sheet does not specify the role played by each of the accused persons, which is a *sine qua non* in filing of a charge-sheet. In support of his contention, he relies on a decision of Hon'ble Supreme Court in ***Sharif Ahmed and Anr. –versus- State of U.P. and Anr.,*** reported in ***2024 SCC OnLine 726.*** He informs the Court that the other two accused persons have already been granted bail by the learned trial court. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that there are serious allegations against the petitioner as far as the materials revealing from the statement of witnesses are concerned. Moreover, date is already fixed on 19th May, 2025 for examination of the prosecution witnesses. As such the bail prayer of the petitioner should be rejected.

Learned Advocate for the *de facto* complainant leaves the matter to the discretion of the Court.

Perused the case diary and the materials on record.

Upon going through the statement of the victim under Section 164 of the Cr.P.C. made before the Magistrate there are no such allegations of any sexual assault. It is found that the petitioner left the victim at Howrah Station and she has returned to her home alone. After completion of investigation charge-sheet has also been submitted. Furthermore, the victim has refused to undergo any medical examination. Moreover, after completion of investigation charge-sheet have been submitted in this case. The petitioner is in custody since 26th December, 2024. Considering the above, this Court is inclined to enlarge the petitioner on bail.

Although it has been strenuously pressed into service that such refusal of medical examination carries a negative inference but the decision in ***Rajesh Kumar @ Munnu (supra)*** is passed against the judgment of conviction upon full-fledged trial. Whether such refusal to undergo medical examination by the victim would give rise to negative inference are matters to be decided in trial.

So far as the decision in ***Sharif Ahmed (supra)*** is concerned, the principal question before the Hon'ble Supreme Court related to a legal issue, that is, the contents of the charge-sheet in terms of Section 173 of Cr.P.C. The Hon'ble Supreme Court in the aforesaid decision has mentioned that the requirements and the entries to be made in charge sheet

including the role played by each of the accused persons in the crime should be separately and clearly mentioned in the charge sheet. Be that as it may, it is pertinent to note that in the present bail application the sustainability or legality of the charge-sheet under Section 173 of Cr.P.C. is not in question.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs.10,000/- (Rupees ten thousand), with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Judge, Special POCSO Court, Serampore, Hooghly. The petitioner shall appear before the trial court on each and every day of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973/Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. The petitioner shall not enter within the jurisdiction of Serampore Police Station except for the purpose of attending court proceedings until further orders.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail in accordance with law without further reference to this Court.

Accordingly, the application for bail being **CRM (M) 7 of 2025** is disposed of.

(Bivas Pattanayak, J.)