

19.05.2025
Item No.01.
Daily List
Court No.39
Mithun
(Rejected)

CRM (M) 208 of 2025

In re : An Application for bail under Section 439 of the Code of Criminal Procedure, 1973 corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with SPL (POCSO) Case no.36 of 2023 which arises out of Police Station Calcutta Central DIV. Muchipara FIR No.175/2023 dated 22.11.2023 under Sections 366A/370/372/373/120B of Indian Penal Code, Sections 4/17/21 of Protection of Children From Sexual Offences Act, 2012 and Sections 3/4/5/6/7 of Immoral Traffic (Prevention) Act, now pending before the Court of the Judge, Bench-II, Exclusive POCSO Court, City Sessions Court, Calcutta.

-And-

In the matter of : Mukul Kumar

... Petitioner

Mr. Rajeev Lochan,
Ms. Riya Jhapri

...for the petitioner

Ms. Faria Hossain,
Md. Kutubuddin

... ...For the State

This matter is appearing under the heading "*For Orders*".

Learned Advocate for the petitioner submitted that there are glaring inconsistencies in the evidence of the victim. At the first instance, before the attending Doctor the victim does not implicate the petitioner. However, subsequently she implicates the petitioner. The age of the petitioner has not been mentioned in the medical examination report. There is no determination of the age of the victim. The attending Doctor during her cross-examination has also stated that the victim did not make any allegation against anyone before the attending Doctor. At the

time of occurrence, the petitioner was attending marriage ceremony of his relative in Bihar. The statement of the victim has been recorded after seven days of lodging of the FIR and is nothing but improvement in the prosecution case. The prosecution has also not established the place of occurrence. The complainant (P.W.4) also failed to recollect from which NGO she informed the incident to the police authorities. As per the medical examination report, the hymen is intact and there is no injury. Further, there is no two finger test. The entire prosecution case is fabricated. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Deshraj alias Musa-versus- State of Rajasthan and Another*** reported in **2024 SCC OnLine SC 2709** and a decision of Allahabad High Court in the matter of ***Danish, Neutral Citation No.- 2024:AHC:41045***. He seeks for enlargement of the petitioner on bail. Copy of marriage certificate and deposition of witnesses submitted on behalf of the petitioner is taken on record.

Opposing such prayer for bail, learned Advocate for the State submitted that the complainant is the 'Freedom Firm' which is evident from the written complaint itself and, therefore, the ground that there is no existence of the said NGO is out and out not acceptable. The investigating agency during the course of investigation has collected the date of birth certificate of the victim which would show that the victim at the time of incident was 15 years of age. The victim has clearly implicated the petitioner during her examination in Court which has also been stated by her before the Magistrate. The copy of the

marriage card submitted on behalf of the petitioner does not establish that the petitioner was not present at the time of incident. The inconsistencies as indicated by the learned Advocate for the petitioner does not nullify the case of the prosecution. Relying on the decision of Hon'ble Supreme Court passed in ***State of Jharkhand-versus-Shailendra Kumar Rai*** reported in ***(2022) 14 SCC 299***, she submitted that the "two-finger test" has been deprecated by the Hon'ble Court and direction has been issued to the Union Government as well as State Government to circulate the guidelines and conduct workshops. She also indicated that the place of occurrence is evident from Page 66 of the Case Diary which clearly shows that the owner is Parbati Guria who is also an accused in the present case. Furthermore, even if the hymen is intact that does not improbabilise the case of the prosecution. In support of her contention, she relied on the *Medical Jurisprudence & Toxicology (Practice & Procedure)* by Dr. Sarla Gupta (Agrawal), Dr. Laxmi Jitendra Gupta and Beniprasad Agrawal. In view of her aforesaid submissions, she prayed for dismissal of the application.

Perused the Case Diary and materials on record.

The victim in her statement before the Magistrate implicates the petitioner. She also deposed of the involvement of the petitioner in the alleged offence. Upon perusal of the medical examination report, it is found that the age has not been mentioned. Be that as it may, the Investigating Agency during investigation has collected the School Certificate which shows that the date of birth of the victim is 18th June, 2008. The controversy as raised by the petitioner with regard to the age of

the victim may be decided in trial. The inconsistencies, if any, in the evidence of the victim *vis-à-vis* her statement before the attending Doctor and its consequences may be examined in trial at the appropriate stage. So far as the defence plea that the petitioner was not present at the time of occurrence relying on a marriage card may also be decided in the trial upon evidence. With regard to the place of occurrence, it is found that the investigating agency has collected documents showing the owner of the petitioner.

It has been rightly pointed out by the learned Advocate for the State that the 'two-finger test' has been done away with and the Union Government and the State Government has been directed to circulate the guidelines of Ministry of Health & Family Welfare and conduct workshop in *Shailendra Kumar Rai (supra)*. Further this Court also finds substances in the submission of learned Advocate for the State that the hymen being intact does not improbabilise the case of the prosecution. The decision in *Deshraj alias Musa (supra)* is distinct in facts. In *Danish (supra)*, there were no allegations of commission of rape by the accused with the victim was made in the statement under Section 164 of CrPC. Hence, the facts are distinguishable.

In light of the above materials and the nature and gravity of the offence, I am not inclined to grant bail.

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

The application for bail being **CRM(M) 208 of 2025** stands dismissed.

Case Diary be returned.

(Bivas Pattanayak, J.)