

21.05.2025
Item No.4
Court No.39
ss
(Allowed)

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

C.R.M.(M) 216 of 2025

In re : An Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with ST Case No.7(9) 2024, CIS Registration No.11/24 arising out of Eco-Park Police Station Case No.176 of 2023 dated 28.07.2023 under Sections 363 of Indian Penal Code, subsequently adding sections 365 of Indian Penal Code read with 4/6 of the Protection of Children from Sexual Offences Act, 2012 thereafter charge sheet being charge sheet no.14/2024 dated 18.02.2024 was submitted under sections 363/365 of Indian Penal Code read with Section 4/6 of Protection of Children from Sexual Offences Act, 2012 and now pending before the Learned Judge, Special POCSO Court, Barasat, North 24 Parganas.

-And-

In the matter of : BBB

... Petitioner

Mr. Moyukh Mukherjee,
Ms. Sarmistha Basak
Mr. Samrat Mandal

...for the petitioner

Mr. Madhusudan Sur, Ld.APP,
Ms. Puspita Saha

...for the State

Ms. Gopa Biswas,
Mr. R. A. Khan
Mr. Saikat Mallick

...for the *de facto* complainant

State files DNA profiling report, which is taken on record.

Learned Advocate for the petitioner submits that the victim left with the petitioner out of her own volition. There are no such allegations of any forcible penetrative sexual assault. The victim and the petitioner are Muslims and they have married each

other. The victim is aged about 15 years. As per Exception 2 to Section 375 of the Indian Penal Code (*in short, 'IPC'*), containing definition of 'rape' sexual intercourse or sexual acts by a man with own wife, the wife not being under fifteen years, is not rape. Thus, the offence alleged does not lie against the petitioner. The petitioner is in custody for 515 days. Upon completion of investigation, charge sheet has been submitted. He seeks for enlargement of the petitioner on bail.

Learned Advocate for the State, opposing such prayer for bail, submits that the petitioner has entered into sexual intercourse with a minor girl resulting in pregnancy of the minor, which is also evident from the DNA profiling report. He seeks for dismissal of the bail application.

Learned Advocate for the *de facto* complainant submits that the victim is presently studying in Class X and if bail is granted in favour of the petitioner, her studies will be affected. She seeks for dismissal of the bail application.

Perused the case diary and the materials on record.

The victim in her statement before the Magistrate has not made any allegation of any forcible sexual assault upon her. Upon completion of investigation, charge-sheet has already been submitted. The petitioner is in custody for 515 days. Considering the above, I am inclined to grant bail to the petitioner on stringent conditions.

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, Barasat, North 24-Parganas. 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 meet the Officer-in-Charge of Eco Park Police Station once in a fortnight, until further orders. The petitioner shall not enter within the territorial jurisdiction of Eco Park Police Station except for the purpose of attending court proceedings and for reporting to the Officer-in-Charge of the concerned Police Station, until further orders. The petitioner shall furnish the address where he shall presently reside before the learned trial court, the investigating officer and the Officer-in-Charge of the police station under whose jurisdiction he shall presently reside.

In the event the petitioner fails to comply with any of the conditions as stated above, the learned Trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

Accordingly, the application for bail being **CRM (M) 216 of 2025** is disposed of.

(Bivas Pattanayak, J.)