

16.05.2025
Item no.2
Court No.39
ss
(Dismissed)

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

CRM (M) 258 of 2025

In re : An Application under Section 439 of the Criminal Procedure Code, 1973 or Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Canning Police Station Case No.418 of 2019 dated 28.07.2019 under Sections 363/365 of the Indian Penal Code and subsequently charge sheeted being Canning PS Charge Sheet No.02 of 2020 dated 22.01.2020 under Sections 342/343/344/346/363/366A/368/370/370A/372/120B/109 of Indian Penal Code read with Sections 63/4/5/6/7/9 of Immoral Traffic (Prevention) Act, 1965 read with Sections 6/17 of POCSO Act pending before the learned Judge, Special Court & Additional Session Judge, 2nd Court at Alipore, South 24 Parganas in Special ST No.15(09) 2021; Special Case No.250 of 2019.

-And-

In Re : Sakher Ali Laskar @ Raju
... Petitioner

Mr. Joy Chakraborty,
Mr. Sandip Dinda
...for the petitioner

Mrs. Sayanti Santra,
Mr. Dipankar Mahata
...for the State

Learned Advocate for the petitioner submits that the Investigating Officer in his evidence has stated that he did not find any evidence except the statement of the victim regarding the presence of the accused Sakher Ali Laskar in West Bengal. The Investigating Agency also during cross-examination failed to recollect the place wherefrom the accused Sakher Ali Laskar was arrested. There is no signature of any person as witness in the arrest memo and as such the petitioner is entitled to be released on bail. In support of his contention, he relies on the decision of

this Court passed in the matter of *Faiyaz Alam @ Fayaz Alam* in *CRM(NDPS) 1770 of 2023*. The reasons of arrest has also not been communicated to the arrestee, which is an infraction of Article 22 of the Constitution of India. To buttress his contention he relies on a decision of Hon'ble Supreme Court in ***Vihaan Kumar -versus- State of Haryana & anr.***, reported in **2025 INSC 162**. The two persons namely, Jiyaaur Sardar and Sujoy Mondal who brought the victim to Howrah Station have been discharged from this case. There is no such material to implicate the present petitioner in the alleged offence. The victim during her examination failed to identify the accused. Further, the victim at the time of incident was more than 18 years and therefore, the offence under the POCSO Act is not attracted in the facts and circumstances of the present case. The petitioner is in custody for 6 years. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that the victim has categorically implicated this petitioner of penetrative sexual assault at Delhi where she was wrongfully confined. Though the victim at the time of her examination in Court mistook in identifying this petitioner, yet by such identification, presence of the petitioner and his involvement is duly indicated by her. The victim in her cross-examination also voluntarily stated before the Court of involvement of this petitioner. The medical examination report also is supportive of such fact. The mother of the victim (PW 2) also deposed of the involvement of the present petitioner. Further the child consultant, PW-11 also supports the case of

the prosecution. She also submits that during course of investigation the birth certificate of the victim has been collected which clearly shows that the victim was minor at the time of incident. During arrest since none of the local persons agreed to sign, RT message was sent to the father of the accused. As far as the proposition in *Vihaan Kumar's case (supra)* is concerned, she submits that the decision of Hon'ble Supreme Court has been passed on 7th February, 2025. She seeks for dismissal of the application for bail.

Despite service none appears on behalf of the *de facto* complainant.

Perused the case diary and materials on record.

The victim in her deposition in Court clearly implicates this petitioner of his involvement in the alleged offence. It is a fact that the victim mistook the petitioner as Mirza while identifying. However, such aspect does not entirely improbabilise the case of the prosecution. The victim has also voluntarily stated before the Court of involvement of this petitioner. The deposition of mother of victim and of child consultant (PW 11) supports the evidence of the victim as regards involvement of the petitioner in the alleged offence. As far as the issue of age is concerned, the prosecution has collected the birth certificate of the victim during investigation, which shows the date of birth as 12th August, 2002. The incident has taken place in the year 2019. The controversy with regard to age of victim can be decided in trial at the appropriate stage.

The arrest memo shows that since there was refusal of the witnesses to sign, intimation was sent to the father of the

accused-petitioner by RT message of such arrest. The arrest memo has been exhibited in Court during evidence (P-33) containing such note of refusal by the witnesses. The decision in *Faiyaz Alam @Fayaz Alam (supra)* is factually distinguishable.

Now coming to the decision of *Vihaan Kumar (supra)* it is found that the same has been delivered in the year 2025 and the arrest has been made in the year 2019. Be that as it may, the question whether in all cases the grounds of arrest are to be informed to the accused is under consideration before the Hon'ble Supreme Court in ***Mihir Rajesh Shah -versus- The State of Maharashtra & Anr [Special Leave to Appeal (Crl) No. 17132/2024]***. Hence this Court recuses from making any observation in this regard.

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 learned Advocate for the State that the examination of the witnesses have already been concluded and 22nd May, 2025 is the date fixed for examination of the accused persons under Section 313 Cr.P.C.

Considering the above materials and the nature and gravity of the offence, this Court is not inclined to grant bail to the petitioner.

Accordingly, the bail prayer of the petitioner is rejected.

The application for bail being **CRM(M) 258 of 2025** stands dismissed.

(Bivas Pattanayak, J.)