

11.07.2025
Item No.13.
Daily List
Court No.42
Mithun
(Rejected)

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

CRM (M) 746 of 2025

In re : An Application for bail under under Section 439 of the Cr.P.C., 1973/ Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Special ST 32 of 2023, Special no.204 of 2022 arising out of Baruipur Police Station Case No.1634 of 2022, dated 15.10.2022, under Section 10 of the Protection of Children from Sexual Offences Act, 2012, charge sheet no.1533 of 2022 dated 31.10.2022, under Sections 376AB/376(2)(f) of the Indian Penal Code, 1860, under Section 6 of the Protection of Children from Sexual Offences Act, 2012 pending before the learned Additional Sessions Judge, 1st Court, Baruipur, South 24-Pargahas.

-And-

In the matter of : XXXXX

... ... Petitioner (in Jail)

Mr. Imtiaz Ahmed,
Mr. Ghazala Firdaus,
Mr. Sk. Saidullah,
Mr. Mithun Mondal,
Md. Arsalan,
Ms. Zannat Haque

... ... For the Petitioner

Mr. Saurov Mallick

... for the *de facto* complainant.

Ms. Faria Hossain, APP,
Ms. Mausumi Sarkar

... ...For the State

Learned Advocate for the petitioner submits that, the petitioner has been falsely implicated due to some family dispute. Petitioner is in custody for last 3 years. Due to long incarceration of the petitioner, the family of the petitioner

including the victim and the *de facto* complainant are suffering acute financial distress. In such backdrop, he seeks for enlargement of the petitioner on bail.

Learned Advocate for the *de facto* complainant submits that the entire prosecution case has been initiated at the instance of overzealous police authorities. He leaves the matter to the discretion of the Court.

Learned Advocate for the State vehemently opposes such prayer for bail and submits that the victim in the instant case has been ravished by her father. The victim has consistently stated before the Magistrate as well as during her examination in Court of the penetrative sexual assault upon her by the petitioner who happens to be her father. The POCSO Act has been enacted to protect the interest of the child both as a victim as well as witness, which in no circumstances should be taken lightly as offences of private nature and in fact such offences are bound to be taken as offences against the society. To buttress her contention, she relies on the decision of Hon'ble Supreme Court in ***Ramji Lal Bairwa & Anr. -versus- State of Rajasthan & Ors.*** reported in **[2024] 11 S.C.R.641**. She seeks for dismissal of the bail application.

Perused the case and diary and materials on record.

The victim in her statement before the Magistrate as well as in Court during her examination implicates the petitioner, who happens to be her father, of sexual violence and assault upon her. She has also stated before the attending Doctor of

such fact. The allegation as narrated by the victim is serious one. At this stage, it would apposite to reproduce Paragraph No.12 in *Ramji Lal Bairwa & Anr. (supra)* of the Hon'ble Supreme Court as hereunder:-

*"12. The objects and reasons for the enactment of the POCSO Act, as extracted above, would undoubtedly show that quashment of proceeding initiated under POCSO Act abruptly by invoking the power under Section 482 Cr.P.C. without permitting it to mature into a trial, except on extremely compelling reasons ex facie mala fide initiated or initiated solely to settle the score etc., would go against the very intention of the legislature behind the enactment. As noted earlier, it is the inadequacy of the existing laws to address certain issues relating sexual offences against the children that made the legislature to come up with the aforesaid legislation with a view to protect and respect the privacy and confidentiality of children and to ensure their physical, emotional, intellectual and social development. The POCSO Act also addressed the lack of provisions defining various offences against the children and also adequate penal provisions therefor. A careful scanning of the various provisions under the POCSO Act would reveal that with a view to achieve the aforesaid objects and purposes various offences against the children are specifically defined and provisions for adequate penalization are also inserted in the Act. Obviously, rubbing the breast of a child would constitute an offence of 'sexual assault' under Section 7 of POCSO Act, punishable with imprisonment of earlier description for a term which shall not be less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as heinous and serious. Needless to say, that commission of such offences cannot be taken lightly as offences of private nature and in fact, such offences are bound to be taken as offences against the society. In the decision in **Attorney General for India v. Satish and Anr.** at paragraph 38, this Court held thus:-*

*"The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialized or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7. As held by this Court in *Balram Kumawat v. Union of India*, the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law".*

Bearing in mind the observation of the Hon'ble Supreme Court as indicated above, the materials and the nature the gravity of the offence, I am not inclined to enlarge the petitioner on bail.

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

However, the Trial Court is directed to expedite the trial to the fullest extent and conclude the same at an early date without granting any unnecessary adjournment to either of the parties.

Prosecution is directed to produce witnesses before the Trial Court on the schedule dates fixed for examination of witnesses.

Parties are directed to cooperate in the trial before the Trial Court.

The application being **CRM(M) 746 of 2025** stands dismissed.

(Bivas Pattanayak, J.)