

25.07.2025
Item No.12.
Daily List
Court No.42
Mithun
(Rejected)

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

CRM (M) 853 of 2025

In re : An Application for Bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with Special Case No.14 of 2025 rejecting the prayer for bail of the accused/petitioner in connection with Canning P.S. Case No.642 of 2024 dated 16.09.2024 under Sections 87/64(2)(m)/352/351(2)/3(5) of the Bharatiya Nyaya Sanhita, Sections 6/17 of the Protection of Children from Sexual Offences Act, 2012 read with Section 9/11 of the Child Marriage Act, 2006 read with Section 67 of the Information Technology Act, 2000 pending in the Court of the learned Judge, Special Court and 2nd Additional Sessions Judge, Alipore.

-And-

In the matter of : XXXXXX

... .. Petitioner (in Custody)

Mr. Arka Ranjan Bhattacharya,
Mr. Asif Ikbal Baidya

... .. For the Petitioner

Ms. Afreen Begum

...for the *de facto* complainant

Mr. Iqbal Kabir,
Ms. Suchismita Dutta

... ..For the State

Affidavit-of-service filed by the petitioner is taken on record.

Learned Advocate for the petitioner submits that the victim and the petitioner had previous love affairs. In the FIR, there is no such allegation of sexual assault which has only been stated by the victim in her statement before the Magistrate which is nothing but embellishment and improvement of the earlier statement. The victim's medical examination has been made on

two occasions and upon comparative study it will show that there is discrepancy in date of occurrence as stated by the victim before the attending doctors. During medical examination, two finger test has been done which is consistently deprecated by the Hon'ble Supreme Court. This so-called test has no scientific basis and neither proves nor disproves allegations of rape. Thus the medical examination report has hardly any relevance to the allegation of rape. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in ***State of Jharkhand versus Shailendra Kumar Rai aias Pandav Rai*** reported in **(2022) 14 SCC 299**. There is delay of one year in lodgment of the FIR which cannot be improved in trial subsequently. To buttress his contention, he relies on the following decisions of Hon'ble Supreme Court passed in (i) ***Rajesh Patel versus State of Jharkhand*** reported in **(2013) 3 SCC 791**; (ii) ***Darshan Singh versus State of Punjab*** reported in **(2024) 3 SCC 164**; and decision of this Court in ***C.R.M (A) No. 585 of 2025 (In Re: Piju Mondal @ Priyankar Mondal & Ors.)***. The petitioner has been falsely implicated in this case. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that the victim in her statement before the Magistrate implicates this petitioner of commissioning rape upon her. There are also allegations of uploading obscene photographs. She seeks for dismissal of the bail application.

Learned Advocate for the *de facto* complainant also submits that the victim used to take tuition from the elder brother of the petitioner. The victim was blackmailed and threatened by the

petitioner of uploading her photographs and she was coerced into sexual intercourse with the petitioner. She also seeks for dismissal of the bail application.

Perused the case diary and the materials on record.

The statement of the victim clearly implicates this petitioner of commissioning rape upon her and also of threatening of uploading obscene photographs. The delay, if any, in lodging of the FIR may occasion for many reasons. However, that may not improbabilize the case of the prosecution. Moreover, the consequence of delay, if any, in lodging the FIR may be examined in trial in the backdrop of the evidences to be adduced by the prosecution. So far as the decisions of the Hon'ble Supreme Court in *Darshan Singh (supra)*, *Rajesh Patel (supra)* is concerned, those are factually distinguishable and that apart the decisions have been rendered in appeal against conviction on full-fledged trial.

In *Shailendra Kumar Rai Alias Pandav Rai (supra)*, the Hon'ble Supreme Court deprecated two-finger test because of the regressive and invasive nature of such test and further held that so-called test has no scientific basis and neither proves nor disproves allegations of rape. Be that as it may, in view of consistent implication of victim against the petitioner of commission of rape, whether the medical examination report has any bearing is to be adjudged in trial and said proposition cannot come in the aid of the petitioner.

The decision in *Piju Mondal @ Priyankar Mondal (supra)* is not under the POCSO Act and the allegations are attempt to commit rape which is distinguishable from the case at hand.

Considering the allegations made by the victim noted hereinabove and the nature and 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.

The application being **CRM(M) 853 of 2025** stands dismissed.

(Bivas Pattanayak, J.)