

09.07.2025
Item No.03.
Court No.42
ss
(Rejected)

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

CRM (R) 77 of 2025

In re : An Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Nager Bazar Police Station Case No.78 dated 28/04/2025 under Sections 8/12 of Protection of Children from Sexual Offences (POCSO) Act (corresponding to (POCSO) No.96 of 2025) pending before the learned Additional District & Sessions Judge, Special Court under POCSO Act, Barrackpore, North 24-Parganas.

-And-

In the matter of : Samirul Mondal

... .. Petitioner

Mr. Ayan Basu,
Mr. Prabir Kumar Das,
Mr. Sumit Routh

... .. For the Petitioner

Ms. Zareen Nasima Khan
Mr. Tirupati Mukherjee

... ...For the State

Ms. Suchismita Dutta

... for the *de facto* complainant

Service report filed on behalf of the State is taken on record.

Learned Advocate for the petitioner submits that on the date of occurrence, a birthday party was held in the restaurant in the name and style of "*Barbeque Nation, Diamond Plaza Mall*" and there was some disputes regarding bill with the restaurant authorities. Over such incident, the petitioner has been falsely implicated in this case. Further, the petitioner at the time of arrest was not informed of the grounds of arrest, which is in violation of Article 22(1) of the Constitution of India. Though,

charge-sheet has been submitted, the same will not validate a breach of constitutional mandate under Article 22(1). Relying on the decision of the Hon'ble Supreme Court passed in ***Vihaan Kumar -versus- State of Haryana & anr.***, reported in **2025 INSC 162**, he submits that when a violation of provision of Article 22(1) is established, it is the duty of the Court to forthwith order the release of the accused. The petitioner is in custody for 73 days and after completion of investigation, charge-sheet has also been submitted. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that the victim aged about 8 years at the time of incident has categorically implicated this petitioner of his involvement in the alleged offence. The norms of arrest have duly been complied in case of the petitioner. She seeks for dismissal of the bail application.

Learned Advocate for the *de facto* complainant also submits that the minor victim of tender age has implicated the petitioner. Upon instruction she informs the Court that the victim is traumatized after such incident. She seeks for dismissal of the application for bail.

Perused the case diary and materials on record.

The victim is a minor girl of 8 years of age. The victim has categorically implicated this petitioner of his involvement in such sexual assault. It has been vociferously argued on behalf of the petitioner relying on *Vihaan Kumar (supra)* that the petitioner needs to be released since the grounds of arrest has not been

informed violating Article 22(1) of the Constitution of India. Though, in the forwarding report, it has been mentioned that the grounds of arrest has been informed but no document could be produced by the State. Be that as it may, while dealing in any aspect regarding POCSO Act, the background and purpose of enactment of such a special legislation ought to be borne in mind.

Article 15 of the Constitution of India *inter alia*, confers the State powers to make special provisions for children. Further, Article 39 provides that the State shall in particular direct its policy towards securing that the tender age of the children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Since the data collected by the National Crime Records Bureau showed increase in sexual offence against children and those were not adequately addressed by the extant laws, the Protection of Children from Sexual Offences Act, 2012 (*in short* 'POCSO Act') was enacted with the sole motive to protect the interest of the child both as a victim as well as a witness. The POCSO Act is a special legislation for children for their development in a healthy manner under conditions of freedom and dignity and protection against exploitation, child abuse, sexual assault, sexual harassment and pornography etc. It is a gender neutral legislation. It directs the State to take various steps at many levels so that the child is protected and the trial is

appropriately conducted (See: ***Alakh Alok Srivastava -versus- Union of India***, reported in **2018(17) SCC 291**).

In the cited decision of *Vihaan Kumar (supra)*, the offences alleged are under Sections 409, 420, 467, 468 and 471 read with Section 120B of the Indian Penal Code (in short 'IPC'). That apart, the question whether in all cases the grounds of arrest has to be informed to the accused is in 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]***, the decision of which is reserved by the Hon'ble Supreme Court. As such, this Court recuse from making any observation in this regard.

Bearing in mind background and the objective of the POCSO Act as enumerated hereinabove, the specific implication of the minor aged about 8 years against the petitioner and the nature and gravity of the offence, I am not inclined to grant bail to the petitioner.

Accordingly, the bail prayer of the petitioner is rejected.

The learned trial court is directed to expedite the trial to the fullest and conclude the trial at an early date without granting any unnecessary adjournment to either of the parties.

The application for bail being **CRM (R) 77 of 2025** stands dismissed.

(Bivas Pattanayak, J.)