

23.07.2025
Item No.9
Court No.42
ss
(Rejected)

**IN THE HIGH COURT AT CALCUTTA.
CRIMINAL MISCELLANEOUS JURISDICTION
CRM (M) 917 of 2025**

In re : An Application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Hingalganj Police Station Case No.189 of 2024 dated 22.10.2024 under Sections 64(2)(f)/65(2) of the Bharatiya Nyaya Sanhita, 2023 and Section 6 of Protection of Children from Sexual Offences Act pending before the learned Judge, Special Court under POCSO Act, Basirhat, North 24-Parganas.

-And-

In the matter of : Naba Kumar Gayen alias Lalu

... .. Petitioner

Mr. Angshuman Chakraborty

Mr. S. S. Saha

... .. For the Petitioner

Mr. Antarikhya Basu

Mr. Asif Dewan

... ...For the State

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

Learned Advocate for the petitioner submits that the petitioner has been falsely implicated out of political grudge. The victim is the student of the petitioner. Tuition fee of the victim has remained unpaid for several months. In order to avoid making such payment of tuition fees to the petitioner, he has been entangled on frivolous allegations. Further the ground of arrest has not been intimated to the petitioner and thus there is violation of Article 22(1) of the Constitution of India and the petitioner should be released. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in

Vihaan Kumar -versus- State of Haryana & anr., reported in **2025 INSC 162**. He seeks for enlargement of the petitioner on bail.

Opposing such prayer for bail, learned Advocate for the State submits that ratio of *Vihaan Kumar (supra)* is pending consideration before the Larger Bench of the Hon'ble Supreme Court. So far as the merit of the bail application is concerned, he submits that the victim has alleged of such repeated penetrative sexual assault against the petitioner. He seeks for dismissal of the bail application.

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

Perused the case diary and materials on record.

The victim aged about 11 years in her statement before the Magistrate implicates this petitioner of penetrative sexual assault. The allegation is grave.

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. 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.

For better appreciation, the Statement of Objects and Reasons of the legislation is reproduced hereinbelow :

“Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of 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.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Court for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives."

Considering the said objects and reasons, the Hon'ble Supreme Court in **Ramji Lal Bairwa & Anr. -versus- State of Rajasthan & Ors.** reported in **[2024] 11 S.C.R.641** observed as follows:-

"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 malafidely 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".

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 the aforesaid observations of Hon'ble Supreme Court and the background and the objective of the POCSO Act as enumerated hereinabove, the specific implication of the minor aged about 11 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 (M) 917 of 2025*** stands dismissed.

(Bivas Pattanayak, J.)