

18.07.2025
Item No.2(DL)
Court No.42
srm
(Allowed)

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

C.R.M.(M) 1023 of 2025

In re : An Application for Bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Session Special Case (POCSO) No.125 of 2025 arising out of Airport Police Station Case No.87 of 2025 dated 01.06.2025 under Sections 115(2)/74/351(2)/3(5) of the Bharatiya Nyaya Sanhita and Section 8 of the Protection of Children from Sexual Offences Act, 2012 pending before the learned Special Judge under POCSO Act, Barrackpore, North 24-Parganas;

-And-

In the matter of : XXX & Ors.

... Petitioners

Mr. Saptangsu Basu, Sr. Adv.
Mr. Kallol Mondal, Sr. Adv.
Ms. Anamitra Banerjee

...for the Petitioner.

Mr. Debasis Roy, PP
Mrs. Zareen Khan,
Ms. Mamata Jana

... ...for the State.

xxx

de facto complainant (in person)

Affidavit-of-service filed on behalf of the petitioners is taken on record.

Learned Senior Advocate appearing for the petitioners submits that this is a clear case where a civil litigation has been moulded into a criminal proceeding with a view to harass the husband and relatives of the husband. The genesis of this case has a direct relation to a litigation where a visitation right was allowed by the Hon'ble Division Bench in favour of the petitioner

No.2, husband of the *de facto* complainant in FA 95 of 2025. Such order was not complied with. Thereafter, contempt application was preferred before the Court. With an ulterior motive to restrain the petitioner no.2 to press for his visitation right, in the guise of a fake allegation, the minor daughter has been brought into the picture. Before the Court taking up contempt application, it has been submitted on behalf of the *de facto* complainant/wife that the allegation made in the FIR may not be true and has been lodged in the heat of the moment. Furthermore, grounds of arrest also have not been intimated to the petitioners in terms of the direction of Hon'ble Supreme Court in ***Vihaan Kumar versus State of Haryana and Another*** reported in **(2025) 5 SCC 799**. The petitioners are in custody for 24 days. He seeks for enlargement of the petitioners on bail.

The *de facto* complainant appears in person. She submits that her daughter had previously traumatic attacks. She intended to comply the order of the Court but since such incident has taken place which further traumatize her daughter such order could not be complied with. Her daughter is suffering from mental stress due to the said incident. She seeks for dismissal of the bail application.

Learned Public Prosecutor appearing for the State submits that the victim girl supports the case of the prosecution. However, in his usual fairness, he candidly submits that there are statements of the other witnesses which would show that no such incident has taken place.

Perused the case diary and the materials on record.

There cannot be any quarrel that the *de facto* complainant and the petitioner No.2, being the husband of the *de facto* complainant, are in litigation over the custody of the minor child as well as of visitation of the child. The petitioner No.2 was allowed visitation by this Court. The petitioner no.2, husband had to seek for modification since the child was not brought for visitation as directed by this Court. The order of visitation was modified. Such order since not complied, a contempt application was filed which is pending. The said contempt application is still pending before the Court. In the meantime, this FIR has been lodged. The contents of the FIR precisely pertain to assault upon the *de facto* complainant. The child as per FIR got traumatize due to the incident. The victim child in her statement states of assault and inappropriate touch by the uncle. Be that as it may, the contemporaneous statements of the other witnesses show that no such incident has taken place on such date.

Further in the contempt application being CPAN 960 of 2025, it was submitted on behalf of the wife that she never intended that her husband and parents-in-law should be detained in custody and that the complaint was lodged in the heat of moment after altercation on 30th May, 2025 and the allegations made in the complaint against the petitioner no.2 being the father of the child and her in-laws may not be at all true. Upon considering such submissions, the Court observed and directed as follows:

“3. Having heard the learned Counsel for the respective parties, this Court is of the view that the complaint and the subsequent registration of FIR under the POCSO Act being POCSO Case No.125 of 2025 against the appellant/husband and his father

may not have been at all bona fide and a result of anger in the heat of the moment.

4. The learned Senior Advocate appearing for the respective parties have also indicated to this Court that they wish to put an end to the impasse in their personal life both in respect of the marriage and the custody/maintenance/visitation of the child.

5. The parties shall be at liberty to put in appropriate terms or indicate the same through their respective clients on the adjourned date.

6. This Court directs the parties to communicate this order to the Investigating Officer of Airport Police Station so that final report in the investigation is filed on the basis of the above.”

Bearing in mind the aforesaid and considering the entire circumstances as well as the litigations which are still pending by and between the parties, I am inclined to grant bail to the petitioners.

So far as aspect of the intimating the grounds of arrest to the accused is concerned, the question whether in all cases the grounds of arrest are to be informed 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]***, the decision of which is reserved by the Hon’ble Supreme Court. As such, this Court recuse from making any observation in this regard.

Accordingly, the petitioners be released on bail upon furnishing a bond of Rs.10,000/- (Rupees ten thousand) each, with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Judge, Special Court under POCSO Act, Barrackpore, North 24-Parganas. The petitioners shall appear before the trial court on each and every day of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973/Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and shall not

intimidate the witnesses, victim and *de facto* complainant and/or tamper with evidence in any manner whatsoever.

In the event the petitioners fail to comply with any of the conditions as stated above, the learned Trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

It is made clear that the observation made hereinabove is only for the sake of disposal of this application.

Accordingly, the application for bail being **CRM (M) 1023 of 2025** is disposed of.

(Bivas Pattanayak, J.)