

25.08.2025
Item no.6(DL)
Court No.42
srm
(Rejected)

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

C.R.M.(M) 1186 of 2025

In Re: An Application for Bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Special (POCSO) Case No.11 of 2025 arising out of Bidhannagar (South) Police Station Case No.17 of 2025 dated 28.01.2025 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 presently pending before the learned Special Judge (POCSO Act) at Barasat;

-And-

In the matter of : Shibnath Mondal

.... Petitioner

Mr. Isteaque Ahmed,
Ms. Nafisa Afroz.
Ms. Farheen Rais,
Mr. Junaid Raza

...for the Petitioner.

Ms. Sayanti Santra,
Ms. Suchismita Dutta

...for the State.

Ms. Suveni Banerjee

...for the *de facto* complainant.

1. Report of the learned District Judge, North 24-Parganas dated 22nd August, 2025 is taken on record.
2. Learned Advocate for the petitioner submits that the grounds of arrest were not intimated to the petitioner at the time of arrest and as such there is violation of Article 22 of the Constitution of India. To buttress his contention he relies on the decision of Hon'ble Supreme Court in ***Prabir Purkayastha versus State (NCT of Delhi)***, reported in ***(2024) 6 S.C.R. 666 and Vihaan Kumar versus State of***

Haryana & Anr., reported in **(2025) 2 S.C.R. 424**. Further on the date the petitioner was produced i.e. 29th January, 2025 till 30th June, 2025 the petitioner was not provided any Advocate from Legal Aid Panel nor has been informed of his right of free legal aid which has violated the right of audience and his right enshrined under Article 21 of the Constitution of India. In support of his contention he relies on the decision of the Hon'ble Supreme Court passed in **Hussainara Khatoon & Ors. versus Home Secretary, State of Bihar, Patna** reported in **(1979) 3 SCR 532** and **Khatri & Ors. versus State of Bihar & Ors.** reported in **(1981) 2 SCR 408**. On such ground, he seeks for enlargement of the petitioner on bail.

3. Opposing such prayer for bail, learned Advocate for the State submits that as per the arrest memo, the grounds of arrest has been intimated to the petitioner. Further on 16th June, 2025, one learned Advocate has been appointed by the District Legal Services Authority on behalf of the petitioner. With regard to the merit of the case, she submits that the statement of the victim clearly implicates the petitioner of his involvement in penetrative sexual assault. She seeks for dismissal of the bail application.
4. Learned Advocate for the *de facto* complainant submits that the petitioner is trying to make contact with the victim from the jail. She seeks for dismissal of the bail application.
5. Perused the case diary and the materials on record.
6. On going through the statement of the victim recorded under Section 164 as well as 161 of the Cr.P.C., it is found that

there are clear implications against the petitioner of entering into physical relationship with her. The victim also states of such fact before the attending doctor during her medical examination.

7. So far as the argument with regard to intimating the grounds of arrest is concerned, the arrest memo certifies that the grounds of arrest have been informed to the petitioner. Thus, the assertion of the petitioner in this regard relying on *Prabir Purkayastha (supra)* and *Vihaan Kumar (supra)* does not hold good. Furthermore, the decisions in *Prabir Purkayastha (supra)* is passed in respect of an FIR registered under Sections 13,16,18, 22C, UAPA read with Sections 153A, 120B of IPC and *Vihaan Kumar (supra)* is under Sections 409, 420, 467, 468, 471 read with Section 120B of the Code of Criminal Procedure and Section 50 of the Bharatiya Nagarik Suraksha Sanhita and not under the POCSO Act. That apart, the question whether in all cases the grounds of arrest is to be intimated 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]***.
8. It has been pressed into service that the petitioner (accused) remained undefended from the date he was arrested and produced in Court i.e. 29th January, 2025 till 30th June, 2025. Upon considering such submissions, the learned Special (POCSO) Court, Barasat, directed to furnish report in such regard vide order dated 1st August, 2025.

9. In compliance to order dated 1st August, 2025, the learned Special (POCSO) Court, Barasat furnished a report along with ordersheets, wherefrom it was found that from 12th February, 2025 till 5th June, 2025 the accused was not produced before the learned trial court and he remained undefended and was not represented by any advocate from 29th January, 2025 till 5th June, 2025.
10. On 11th August, 2025 a further report was called for from the State authority directing to disclose the reasons for non-production of the accused before the learned trial court from 12th February, 2025 till 5th June, 2025.
11. In compliance thereof, the Superintendent, Dum Dum Central Correctional Home furnished report dated 12th August, 2025. From such report, it was found that a prayer was made for production of the accused through video conferencing mode and the custody warrant of the accused was produced before the learned trial court on the date fixed. It was further stated in the said report that the video conferencing system at the end of the correctional home was functional, however, the video conference link from the end of the concerned court was not communicated due to which the non-production of the accused happened. Further it was mentioned in the report that the accused was physically produced on and from 5th May, 2025. The custody warrant annexed to the report also revealed that the accused was physically produced on 5th May, 2025 onwards. Since discrepancy was seen in the ordersheet of the learned trial court mentioning that the accused was not produced on 5th

May, 2025, 16th May, 2025 and 5th June, 2025 a further report was called for from the learned Judge, Special (POCSO) Court, Barasat with regard to the following points vide order dated 13th August, 2025:-

- (i) *Whether the link was provided to the jail authority for production of the accused through video conferencing.*
- (ii) *Steps taken after the accused was not produced on consecutive dates, i.e. from 12th February, 2025 till 21st April, 2025 for his production either through video conferencing or physical production.*
- (iii) *Regarding discrepancy in the order vis-à-vis the custody warrant annexed to the report of Superintendent, Dum Dum Correctional Home dated 12th August, 2025.*

12. In Addition thereto, the learned District Judge, North 24-Parganas was also directed to furnish a report disclosing whether video conference link was regularly provided to jail authority for production of the accused through video conference in the district with particular reference to this case.

13. In compliance to the above direction, the learned trial court furnished its report with regard to the points as noted in the aforesaid order of this Court as follows:

- i. *That the LAN Connection, internet connection, video conferencing system of the accused as well as the VG have been totally disrupted and non functional since the middle of March, 2025. The WIFI connection had also not been functioning since the first week of February, 2025 and the same has been restored very recently by the BSNL authority. Due to persistent net work problems and technical issues, the VC link for production of the accused with the Jail Authority could not be established by the Court, resulting which no such link was provided to the Jail Authority since first week of February, 2025. The matter was brought to the notice of the Ld. District Judges, North 24 Parganas from time to time vide Letter No.371*

dated 28.03.2025, Letter No.435 dated 10.04.2025, Letter No.522 dated 02.05.2025 and Letter No.581 dated 13.05.2025. Further that the matter was also brought to the notice of Ld. Registrar General, High Court, Calcutta vide Letter No.866 dated 15.07.2025.

- ii. Further that the Jail Authority was verbally informed for physical production of the accused and in the custody warrant of the accused direction was given from time to time for production of the accused and the Jail Authority was directed for physical production of the accused since 05.05.2025 by specifically mentioning about the same in the custody warrant of the accused Shibnath Mondal.*
- iii. That due to clerical mistakes there has been discrepancies in the order sheets dated 05.05.2025, 16.05.2025 and 05.06.2025 in the matter of production of the accused persons, although in the custody warrants it has been mentioned from the Court that the accused Shibnath Mondal was produced before the Court on the above three dates.*

That she joined the Court in the afternoon of 21.04.2025 as per the Notification No.2797-A dated 26.03.2025 and No.-724-J/JD/V/1J-04/09(Pt-IV) dated 11.03.2024 of the Hon'ble High Court, Calcutta and sincerely sought for forgiveness for her unintentional mistakes and prayed for acceptance of the report.

14. The learned District Judge in its report dated 22nd August, 2025 stated as follows:

That video conference link is regularly provided to jail authorities for production of the accused persons through video conference in the district of North 24 Parganas. With reference to the Video Conference facility in the Court of the Learned Special Judge (POCSO) Court, it is submitted that the LAN connection, internet connection, Video conferencing System in the said Court was totally disrupted and it was not functioning properly since March, 2025. The Learned Judge, Special (POCSO) Court at Barasat has narrated the same, in detail, in her report dated 19.08.2025 which has already been placed before the Hon'ble Court. Further that the matter of non-functioning of the Video Conferencing System was reported to the Central Project Coordinator of the Hon'ble High Court and also to the Learned Registrar General, Hon'ble High Court at

Calcutta and copies of such communications are enclosed herewith for ready reference.

15. From the aforesaid reports, it manifest that the video conferencing facility in the Court of the learned Special Judge (POCSO) Court at Barasat is non-functional since March, 2025. It is relevant to note that although the video conferencing system was non-functional, yet no specific order/direction was passed to the jail authorities for production of the accused physically excepting mentioning the same in the custody warrant. Further learned trial court chose to inform the jail authorities verbally for physical production as is depicted in its report. Despite non-production on several dates, the learned trial court waited for production of the accused till he was produced on 5th May, 2025 and refrained from passing any orders for physical production. The report of the learned trial court is silent about the reasons for waiting such long for production of the accused to happen physically. Had the accused been produced at regular intervals, his right to be defended could have been ensured by the learned trial court. It is pertinent to note that the learned trial court did not ascertain as to whether the accused is represented through his learned advocate or not.
16. The learned trial court has reported the fact that, due to clerical mistake, there has been discrepancy in the order sheets dated 5th May, 2025, 16th May, 2025 and 5th June, 2025 inasmuch as though the accused person was produced on the said dates as per custody warrant, yet the ordersheet

records of non-production of the accused. This is quite alarming that the learned trial court in the garb of clerical mistake tries to whittle down a serious discrepancy in its ordersheets. It is relevant to note that due to such non-production of the accused, he could not be represented through any Advocate and remained undefended till 16th June, 2025 when a learned Advocate was appointed on behalf of the accused from LADCS on verbal request of the learned trial court.

17. In *Hussainara Khatoon (supra)* the Hon'ble Supreme Court observed as follows:

"We may also refer to Article 39A the fundamental constitutional directive which reads as follows:

"39A. Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (emphasis added)"

This Article also emphasises that free legal service is an inalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the

provision of such lawyer. We would, therefore, direct that on the next remand dates, when the under-trial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such under-trial prisoners and if any application for bail is made, the Magistrates should dispose of the same in accordance with the broad outlines set out by us in our judgment dated 12th February, 1979. The State Government will report to the High Court of Patna its compliance with this direction within a period of six weeks from today.”

18. Reiterating the observation of the Hon’ble Supreme Court in *Hussainara Khatoon (supra)* the Hon’ble Supreme Court in *Khatri (supra)* also observed as follows:

“But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Un-fortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to

take advantage every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incom-municado situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the cir-cumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases invol-ving offences such as economic offences or offences against law prohi-biting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.”

19. Therefore, bearing in mind the aforesaid observations of the Hon’ble Supreme Court it was incumbent upon the learned trial court to ascertain whether the accused was duly produced before it and whether he is fairly represented by learned Advocate before it or not. The ordersheets reveal that it is bereft of the steps which is required under law.
20. In the aforesaid backdrop, the matter be placed before the Hon’ble Chief Justice for His Lordship’s consideration of the action of the learned trial court presided over by Officer presently holding Special (POCSO) Court, Barasat who joined on 21st April, 2025 as well as predecessor-in-office or any officer-in-charge of the POCSO Court, at the relevant period.
21. Considering the *prima facie* incriminating materials as indicated in paragraph no.6 and the nature and gravity of the offence, the prayer for bail is rejected.
22. The application for bail being **CRM (M) 1186 of 2025** stands dismissed.
23. Before parting, it would be relevant to place on record that the learned District Judge, North 24 Parganas, has reported

that the estimate was submitted by the Public Works Department (IT) for replacement of damaged components of Video Conferencing System and annual maintenance of the same and the said estimate was approved by the Hon'ble Court. Since then no further communication as regards the administrative approval and sanction of fund by the Government has been received and the proposed work for replacement of damaged components of Video Conferencing System has not yet been taken up.

24. In view of the above, learned Registrar concerned is directed to take up the matter with the State Government for sanction of funds at the earliest for effecting the work.
25. Let a copy of this order be forwarded to the learned Registrar General, High Court, Calcutta.
26. All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Court.

(Bivas Pattanayak, J.)