

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

01.07.2026
Ct No.5
Item No.34
Ranita

CRR 220 of 2026

In Re: An application under Section 528 of BNSS, 2023

..... Petitioner

In Re: Aliyas Md

..... Petitioner

Mr. Jaydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Nr. Shubham Kumar
Ms. Jasmin Haque
Ms. Priti Das

...for petitioner.

Mr. Avrojoyti Das, Ld. APP
Mr. Raj Kumar Mitra

...for State.

1. An order of the Special Court under Pocso Act 2nd Additional District Judge Jalpaiguri, dated 17.01.2026 in Sessions (pocso) case No.69 of 2018 is under challenge in the instant criminal case by dint of which the Court has issued nonbailable warrant of arrest against the petitioner on the ground of his prolonged absence.
2. Mr. Bhowmik, learned advocate for the petitioner has submitted with reference to the F.I.R dated 12.05.2018 and charge sheet dated 31.07.2018, that before submission of charge sheet in the case, the petitioner was granted bail by the Court. He placed his argument and cited a judgment of the

Supreme Court reported in **(1982) 3 SCC 378, [Free Legal Aid Committee Vs. State of Bihar]** in which the Court has held that whenever an accused is released on bail he need not be required to appear before the Court until the charge-sheet is filed and the process is issued by the Court.

3. It is further submitted that the petitioner has never misutilized liberty granted in bail and always complied with the Court's directions.
4. Subsequently, after filing of charge sheet allegedly the petitioner has never been issued with any notice in accordance with law. Hence Mr. Bhowmik has apprised that since no notice was issued to the petitioner after filing of the charge sheet, the petitioner did not appear before Court on the date fixed as he had no knowledge about filing of charge sheet. That such absence was bona fide on part of the petitioner. It is submitted further that there is no laches or intentional avoidance by the petitioner of the process of the Court for which he may be subjected to an order of warrant of arrest.
5. The petitioner is aggrieved that without considering his bona fide and the fact that he was earlier on bail, the order dated 17.01.2026 for issuance of warrant of arrest against him due to his non appearance before the Court is unsustainable in the eye of law.
6. Mr. Das, learned APP raises strong objection to the contention of the petitioner in view of the fact that the liberty granted in bail of pre charge sheet period cannot be continued to be enjoyed by the petitioner after the submission of charge sheet insofar as the petitioner has been charged for the more grievous offence under Section 8 of the Pocso Act in the charge sheet, which was not there earlier against the petitioner.

7. It appears from the submissions made on behalf of the respective parties as well as from the materials produced before me that the petitioner was in Court bail during the period of investigation. Accordingly, it is understood that in terms of the law settled by the decision of the Supreme Court in the case ***Free Legal Aid Committee (supra)***, he was not normally required to appear before the Court till issuance of process against him by the Court after filing of charge sheet in the case. Accordingly, non appearance by the petitioner does not mean to be in contravention of the provision of law insofar as there is no contradiction to the submission made on behalf of the petitioner that after issuance of charge sheet he has not been notified at all.
8. Hence without notifying the petitioner after receipt of charge sheet, the Court could not have proceeded to record his absence and issue warrant of arrest against him that being in violation of the dictum of the Supreme Court in the Judgment refer to above. Under such circumstances, let the order of the Judge Special Court under Pocso Act, 2nd Court at Jalpaiguri dated 17.01.2026 in sessions Court (Pocso) case No.69 of 2018 to be set aside.
9. Let the learned trial Court be directed to immediately proceed in accordance with law by issuance of notice against the accused person/present petitioner.
10. The present criminal revision application is allowed with the direction as above. The impugned order dated 17.01.2026 is set aside.

(Rai Chattopadhyay, J.)

