

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 229 of 2025

XXXX Guardian of the Victim Girl
versus
The State of West Bengal

For the Petitioner : Mr. Satyam Sarkar.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Aniruddha Biswas.

Heard On : 14.01.2026.

Judgement On : 14.01.2026.

Tirthankar Ghosh, J. :

The present revisional application has been preferred against the order dated 20.12.2024 passed by learned Additional Sessions Judge, Mekhliganj, Cooch Behar in Criminal Misc. Case No. 131 of 2024 which was preferred in connection with POCSO Case No. 17 of 2024. By the said order, the learned court refused the prayer for interim compensation as advanced by the petitioner who is the mother of the victim girl ("Y").

The allegation made in the letter of complaint, which is the genesis of Haldibari Police Station Case No. 122 of 2024 dated 29.08.2024, is as follows :

The informant addressed a written complaint to the Inspector-in-Charge, Haldibari Police Station informing that on 24.08.2024 at about 9.30 hrs., her minor daughter, aged about 16+ years, left home by representing that she will attend her tuition classes. After lapse of considerable period of time, the victim girl ("X") did not return. As such, the mother of the victim girl ("Y") along with her other relations started searching for her, but the minor victim girl ("X") was not traceable. The informant had been to the private tutor also who represented that "X" did not attend her tuition classes on the said date. The informant thereafter searched for her daughter at different places, but in spite of best of her efforts, she could not trace out her minor girl. As such, she alleged that her minor daughter had been kidnapped by unknown persons and so the police authorities should investigate the case for tracing out her daughter and take steps against the accused persons. On the basis of such complaint, Haldibari Police Station Case No. 122 of 2024 was registered for investigation under Sections 137(2)/140(3) of the BNS, 2023.

In course of investigation, "X" was recovered from the residence of the accused persons and it was found that as a result of aggravated penetrative sexual assault in due course of time she was carrying a foetus of more than 13 weeks. The investigating agency on completion of investigation also submitted charge-sheet against three accused persons wherein Tapan Kumar Roy was charged under Sections 137(2)/140(3) of the BNS, 2023 read with Section 6 of the POCSO Act and two other accused persons viz. Sumati Roy and Prasenjit Roy were charged under Sections 137(2)/140(3) of the BNS, 2023.

“Y” has approached this Court being aggrieved by the order dated 20.12.2024 passed by the learned Additional Sessions Judge, Mekhliganj, Cooch Behar as the learned court refused the prayer for interim compensation.

The learned court while refusing the prayer for interim compensation was pleased to observe as follows :

“In the instant case, it appears from record as well as from the statement of VG and also from the medical report that the VG left her house and fled away with the accused Tapan Roy and also got married and lived with him. Without getting into the merit of the case, it prima facie speaks about the willingness of VG, although, she was minor as per FIR. Furthermore, the face of the medical report also indicates nothing adverse. Hence, while considering all the material aspects, I do not find it is a fit case where the recommendation for payment of interim compensation at pre-trial stage is necessary. Hence, the application for interim compensation to the victim girl is thus rejected and disposed of accordingly.”

Learned advocate appearing for the petitioner submits that the minor victim girl (“X”) is still suffering and is under constant medical treatment. To that effect, some documents have also been placed before this Court in addition to the documents which have been placed before the learned Special Court.

It is submitted that the purpose of compensation in cases under the POCSO Act is with a definite purpose and for welfare of the minor victim. The same was not taken into account by the learned court and erroneously the

aforesaid observations have been made thereby rejecting the prayer of the petitioner in spite of the entitlement of the said compensation at the interim stage.

Learned advocate for the petitioner has relied upon the judgement of the Hon'ble Supreme Court in the case of Nipun Saxena & Anr –Vs. – Union of India & Ors. reported in (2019) 13 SCC 715. Reference has been made to paragraphs 5 and 6 which are extracted below :

“5. Our attention has also been drawn to Rule 7 of the Protection of Children from Sexual Offences Rules, 2012. This Rule reads as follows:

“7. Compensation.—(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the first information report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court under sub-section (8) of Section 33 of the Act read with sub-sections (2) and (3) of Section 357-A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant

factors relating to the loss or injury caused to the victim, including the following—

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;*
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;*
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (v) the relationship of the child to the offender, if any;*
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
- (vii) whether the child became pregnant as a result of the offence;*
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;*
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;*
- (x) any disability suffered by the child as a result of the offence;*
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;*

(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under Section 357-A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these Rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.”

6. *On a reading of the aforesaid rule, it appears to us that the Special Court may, in appropriate cases, on its own or on an application having been filed, pass an order for interim compensation for the immediate needs of the child. Of course, this rule is a gender neutral provision.”*

Mr. Biswas, learned advocate appearing for the State submits that the provisions of the Protection of Children from Sexual Offences Act, 2012 were brought into force keeping in mind the convention of the rights of the child as required under the national, bilateral and multilateral measures to prevent the inducement or coercing of a child for being engaged in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful

sexual practices as well as the exploitative use of children in pornographic performances and materials. The object of the Act would make it clear that sexual abuse of children has been considered to be heinous crimes and as per the Act need to be effectively addressed.

I have considered the submissions of the learned advocates appearing for the petitioner and the State, as also taken into account the reasons so assigned by the learned Additional Sessions Judge, Mekhliganj, Cooch Behar while passing the impugned order.

The following factual and legal position require consideration in the present revisional application :

(i) The victim girl ("X") admittedly is aged 16+ years.

(ii) Section 2(3) of the BNS, 2023 defines child as follows :

"S. 2(3). "child" means any person below the age of eighteen years;"

Section 2 (d) of the POCSO Act defines child as follows :

"S. 2(d). "child" means any person below the age of eighteen years;"

(iii) The present case has been registered under Sections 137(2)/140(3) of the BNS, 2023 apart from the Special Act.

Section 137(1)(b) defines as follows:

"S.137(1)(b). whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such

guardian, is said to kidnap such child or person from lawful guardianship.”

The provision of Section 137(1)(b) emphasizes on the word “entices” which means allured.

So far as the facts of the present case are concerned, the medical evidence reflects that a minor became pregnant presumably because of aggravated penetrative sexual assault.

Section 5(j)(ii) of the POCSO Act is extracted below :

“S. 5(j)(ii). *in the case of female child, makes the child pregnant as a consequence of sexual assault;”*

For an offence under Section 5(j)(ii) of the POCSO Act, the punishment which has been proposed is under Section 6 of the POCSO Act.

So far as the factual aspect of the case is concerned, the ingredients of kidnapping by way of enticing from the lawful guardianship and the sufferings of the victim as a consequence of aggravated penetrative sexual act is fortified by the medical evidence which has been collected by the prosecution.

As the case is at a pre-trial stage, further delving into the facts of the case would prejudice the accused. As such, this Court refrains from detailing further into the facts of the case, but taking into account the contentions advanced by the petitioner being the mother of the victim girl (“Y”) who has suffered a severe injury because of the aggravated penetrative sexual assault

inflicted upon 'X', the issue relating to interim compensation as prayed by the petitioner (mother of the victim girl) requires consideration.

Learned advocate for the petitioner has relied upon the judgement of Nipun Saxena (supra). Paragraph 5 of the said judgement refers to Rule 7 of the POCSO Rules, 2012 wherein provision has been made for interim compensation and in paragraph 6 of the said judgement, there is an emphasis that for immediate needs of the child, interim compensation can be granted.

Subsequently there has been amendment to the Rules and in Rule 9(1) of the POCSO Rules, 2020 provisions for interim compensation has been incorporated. For the purposes of the present case, Rule 9(1) of the POCSO Rules, 2020 is set out as follows :

“9(1). The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.”

So far as the issue relating to interim compensation is concerned, what is more important is the purpose for which such incorporation has been made is to be taken into account. It is stated that for needs of the child for relief or rehabilitation at any stage after registration of the FIR, such interim compensation can or may be provided.

In the instant case, the facts do reveal a sorry state of affairs as a minor girl of 16 years age suffered pregnancy because of being allured and enticed by one of the accused and at a tender age had to undergo abortion because of the risk involved in the life of the minor herself as a consequence the 13 weeks foetus had to be removed by the medical practitioner of the concerned hospital which is part and parcel of the facts of the case. The mental trauma including the physical hazards which is a consequence of such alleged offence obviously is the subject-matter to be taken into consideration.

The learned Additional Sessions Judge, Mekhliganj, Cooch Behar ignored the position of law and observed the offence as a consensual act. Needless to state that consent of a minor cannot be accepted to be a consent in the eye of law and more so, in this particular case where there was enticement which means a consent obtained by fraud. Having regard to the same, I am of the view that the order dated 20.12.2024 passed by the learned Additional Sessions Judge calls for interference. The said order is set aside.

The petitioner is entitled to interim compensation as charge-sheet has already been submitted in connection with the instant case. The petitioner is undergoing medical treatment. As a measure of interim compensation and keeping in mind the quantum fixed in such cases under the West Bengal Victim Compensation Scheme, 2017, a sum of Rs.1,00,000/- (Rupees one lac) is directed to be immediately transferred in favour of the mother of the victim girl ("Y") for treatment of the victim girl ("X"). The said amount would be

adjusted, in case after the pronouncement of the judgement, the court awards compensation.

Petitioner would bring this order to the notice of the learned Additional Sessions Judge, in seisin of the aforesaid POCSO case, who would ensure that the said amount of Rs.1,00,000/- is received by the petitioner within four weeks from the date of communication of this order.

Learned Registrar, Circuit Bench of Calcutta High Court, Jalpaiguri would communicate this order to Secretary, DLSA, Cooch Behar as also to the learned Additional Sessions Judge, Mekhliganj, Cooch Behar.

With the aforesaid observations, the revisional application being CRR 229 of 2025 is disposed of.

Pending application, if any, is consequently disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)