

Special Case No. 11 of 2023 (POCSO) (CIS NO. 11 of 2023)
CNR NO.WBBB05-000542-2023

Order No.02
15-04-2024

Today is fixed for evidence of CSW Nos. 1 and 6. The sole accused on Court bail namely; Jogeshwar Let is present and files hazira. Ld. Special PP is present.

No witness is present. No summons have been returned after service. Accordingly, this Court is not in a position to ascertain whether the summons have been duly served upon CSW Nos. 1 and 6 or not.

An application under Section 231(2) of Cr.P.C is filed on behalf of defence, seeking to defer the cross-examination of CSW No. 1 to CSW Nos. 5, on the grounds stated therein.

Copy served upon the Ld. Special PP.

The law is apposite that while deciding an application under Section 231(2) of Cr.P.C, a balance must be struck between the rights of an accused and the prerogative of the prosecution to lead evidence. However, the party seeking deferral of cross-examination, must get sufficient opportunity to invoke the discretion of the Judge concerned. It is axiomatic that such deferral can not be ascertained as a matter of right. Further, there cannot be a straitjacket formula, providing for the ground on which judicial discretion under Section 231(2) of Cr.P.C can be exercised. Thus, exercise of discretion has to be, on a case to case basis, with the overwhelming objective being to ensure that prejudice is not caused to the prosecution or the defence.

The instant case is one under the POCSO Act. The CSW No. 1 happens to be the defacto complainant, being the mother of the victim girl, while the CSW No.6 happens to be the victim girl herself. The law is well settled that there shall be no adjournment or deferment of the cross-examination of the victim girl. While an application has been filed on behalf of the prosecution, the said application does not cover the evidence of the victim girl. As such, this Court opines that allowing the application under Section 231(2) of Cr.P.C would not cause prejudice to any of the parties. As such the application under Section 231(2) of Cr.P.C, seeking to defer the cross-examination of CSW No.1 to CSW No.5, all of whom happen to be close family members of the victim girl, is considered and allowed.

Having said that, the evidence of the victim girl being the most important under the POCSO Act, be recorded on the next date and for which summons be issued upon her.

Fix 21-05-2024 for evidence of CSW Nos. 6.

(Dictated & corrected by me)

Judge, Special Court (POCSO)
Rampurhat, Birbhum
J.O Code No. WB00885

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