

Order No.08

28-11-2024

Today is fixed for production of the accused person.

Accused Mikhail Ansary is produced from J.C. The defacto complainant as well as V.G both are present. Ld. Special PP is present. The I.O is also present with the C.D.

A bail petition is filed on behalf of the accused person, on the grounds stated therein.

A skeleton record is also received. After causing statements of two witnesses namely; Manoj Murmu and Sukol Soren to be recorded under Section 183 of the BNSS.

Two separate applications are filed on behalf of the I.O; one for issuance of production warrant of the accused person and the other for 07 days police remand.

Perused the same as well as other materials on record, including the C.D.

Heard the Ld. Defence counsel, the Ld. Special PP, the I.O in person, and the defacto complainant, who is present with the V.G.

The Ld.Defence counsel submits before the court that the accused person has been in custody since 11-11-2024 and that there has been no progress in the investigation of this case, due to which there should be no further necessity to detain the accused person behind bars.

The defacto complainant, who is accompanied by the V.G, who also acts as her interpreter, since the defacto complainant is only able to speak the Santhali Language, raises strong objection against the prayer for bail of the accused person, stating unequivocally that the accused Mikhail Ansary was among the several person who had sexually harassed her on that day.

The Ld. Special PP also raises strong objection against the prayer for bail and invites the attention of the court towards the statement of the V.G along with other materials in the C.D.

The accused person is in custody since 12-11-2024. He was implicated for commission of offences under Section 126(2)/74/79/3(5) of the BNS read with Section 8/12 of the POCSO Act and section 3(1)(r)(s)(u)(w) of the SC and ST Act also known as the Prevention of Atrocities Act. The allegations against the accused persons are grave. I find significant incriminating materials in the C.D against the accused person. Considering the materials in the C.D, the statement of the V.G made on dock as well as her statement recorded under Section 183 of the BNSS, I am not inclined to grant bail to the accused person at this stage. Accordingly, bail petition filed on behalf of accused Mikhail Ansary is rejected.

Subsequently, the application for issuance of production warrant and the prayer for P.C are simultaneously taken up for consideration.

Production warrant is issued when an application is filed by the I.O, seeking police remand of the accused person. However, the accused person has been produced before this court today in terms of order dated 14-11-2024. Consequently, the prayer for issuance of production warrant in the present case is misconceived and hence rejected.

Thereafter, the record is taken up for hearing of the prayer for Police remand. The impugned application demonstrates that the grounds for police remand are (a) to verify his confessional statement, (b) to reconstruct the scene of crime, (c) to arrest other co-accused persons and (d) to unearth the motive behind the crime. However, the primary objective for securing police custody of the accused person, as is manifest from the statement of the I.O on dock is to arrest other co-accused, all of whom are said to reside in the State of Jharkhand.

The POCSO Act of 2012 was enacted to protect minor falling prey to sexual abuse. Commission of sexual offence against children is easy, since the offender can easily threaten them, which may result in the victim refraining from sharing details of the incident with their near once, out of fear or trauma. The present case is not only one under the POCSO Act, but it is against a child, who happens to belong to the schedule tribe community. The accused person was brought under arrest on 11-11-2024.

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28-11-2024

The C.D demonstrates that the accused person was personally interrogated by the I.O himself on 11-11-2024, at which time he has confessed of his guilt. Admittedly, the accused person is a permanent resident of the State of Jharkhand, as are apparently, the other co-accused. However, the law is apposite that police custody of an accused can not be granted for apprehension of other co-accused. While in the light of the BNSS, that has come into effect from 01-07-2024, Police custody of an accused can be directed even after the first 15 days (change from the Cr.P.C), there is not any significant reason, as is manifest from the C.D that is compelling enough for the court to grant police custody of the accused person. Conspicuously, I do not find any prayer of the I.O seeking jail interrogation of the accused person, during the period, the accused was in J.C. While in theory, police custody can be granted even in POCSO cases, there should be compelling reasons for the court to pass such order. The grounds mentioned in the prayer for police custody do not inspire confidence in the mind of the court. Consequently, having regard to the materials in the C.D and the submission of the I.O on dock, the Ld. Special PP and the Ld. Defence counsel, prayer for police custody of accused Mikhail Ansary is rejected.

The accused Mikhail Ansary is remanded to J.C till 12-12-2024.

To date for production of the accused person.

Return C.D and call for the same again on the date fixed.

The I.O is directed to cause production of the defacto complainant before this court again on 12-12-2024.

Let a copy of this order be sent to the I.O for information.

(Dictated & corrected by me)

Sd/- S.R.Chowdhury
Judge, Special Court (POCSO)
Rampurhat, Birbhum
J.O Code No. WB00885

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