

Special case number 10 of 2022
CNR. no. WBBK090001022022

In connection with Khatra P.S. case number 17 of 2022 dated 01.05.2022 U/s 4 of POCSO Act.

Order No- 74
Dated – 15.07.2024

Record is put up today on the strength of put up petition filed by prosecution, same is allowed considering the urgency of the matter.

Ld. Special Public Prosecutor of this case is present.

Ld. Advocate for the accused person is present.

Ld. Special Public Prosecutor of this case has filed a petition praying for not to deliver the judgment of this case, as one material witness of this case, who has recorded the statement of victim U/s 164 Cr.P.C has not yet been examined, and the recorded statement U/s 164 Cr.P.C of victim in this case has not been exhibited due to inadvertent mistake. He prays for issuing summon to CSW-16 by exercising power U/s 311 of Cr.P.C . Said petition filed by prosecution is taken up for hearing.

Ld. Advocate for the accused person has vehemently opposed the said prayer of the prosecution and submitted that granting opportunity to prosecution to examine CSW-16 will amount to giving opportunity to prosecution to filling of the lacuna of the prosecution case, as the matter is fixed for delivery of judgment. He prays for rejecting the prayer of the prosecution for summoning CSW-16

I have heard the submission of the Ld. Special Public Prosecutor In-charge of this case and Ld. Advocate for the accused person and perused the records. From the records, it is revealed that this case is fixed for delivery of judgment on 22.07.2024. It is also revealed from the records that in this case the recorded statement U/s 164 Cr.P.C of the victim has not been exhibited and Ld. Magistrate, who recorded the statement of the victim U/s 164 Cr.P.C has also not been examined. It is settled law that in every case there is no requirement of examining the Ld. Magistrate who recorded the statement of victim/ witness U/s 164 Cr.P.C, in view of section 80 of the Indian Evidence Act read with section 294 of Cr.P.C, but in this case victim was only 4 to 5 years old, at the time of recording her statement U/s 164 Cr.P.C and prosecution is relying upon the said recorded statement U/s 164 Cr.P.C. Considering the fact and circumstances of this case, specially the age of the victim and claim of prosecution that contents of the recorded statement U/s 164 Cr.P.C of victim as material evidence, and considering that for the just decision of this case it is essential to examine CSW -16, and this court has power to examine any witness at any stage of this case U/s 311 of Cr.P.C. and that will not be amount to filling up the lacuna of prosecution, as defence has opportunity to cross-examine the said witness. Hence, it will be justified to change the stage of this case from delivery of judgment to evidence and summon CSW-16 for evidence.

Bench clerk is directed to update the records by changing the stage of this case from delivery of judgment to evidence.

Let summon be issued to CSW-16.

To date (22.07.2024) for production of the accused person and prosecution evidence.

Let the copy of this order be sent to Superintendent, District Correctional Home, Bankura for information.

Dictated and corrected by me.

Judge, Special Court

Judge, Special Court
Khatra, Dist.- Bankura
(Under POCSO Act)
J.O. Code WB01399