

Order No. 06

Dated : 08/07/2024

The accused no.-1 as per charge sheet on interim bail is present by filing hazira alongwith a separate petition for extension of interim bail.

**Interim bail of the accused no.-1 is extended till date.**

The accused no.-2 as per charge sheet on CB is also present.

Today is fixed for appearance and hearing of the petition dated 01/04/2024 u/s. 227 Cr.P.C filed on behalf of the accused no.-1.

The petition u/s 227 Cr.P.C. is not pressed and the same is **rejected**.

**A fresh vokatnama is filed on behalf of the defacto complainant in a closed envelope. Let it be kept with the case record. A fresh power is also filed on behalf of both the accused persons. Let the same be also kept with the record.**

Ld. PP, Shri Dibdyuti Sinha is present by filing hazira.

Ld. Defence lawyer is also present.

A fresh petition u/s 227 Cr.P.C is filed on behalf of the accused no.-2. The copy of the petition u/s 227 Cr.P.C is served to Ld. PP.

Ld. Advocate for the de facto complainant is present.

The de facto complainant is also present.

Now, the petition u/s 227 Cr.P.C is taken up for hearing and decision

It is submitted by the Ld. Defence Counsel appearing on behalf of the accused no.-2 that the charge-sheet against this accused was filed u/ss. 509/506 of the IPC. The FIR, the statements of the victim recorded u/s 161 Cr.P.C and u/s 164 Cr.P.C implicated the accused no.-1 only for committing the alleged offences u/ss. 376/417 of the IPC. Nobody including the victim made any statement that the accused no.-2 had any participation in rape with a promise to marry. It is further alleged that whatever evidence has been collected against this accused is that this accused tried to settle the matter between the victim and his brother. He further wanted to discuss with the father of the victim after the month of Begali Chaitra. Ultimately the discussion could not be materialized. This accused is far away from the alleged place of occurrence and was absolutely ignorant of the incident. The offence of commission of sexual relation with a promise to marry and the offences about insult, abuse and threat to life are different types of offences and those if at all allegedly happened, those were beyond proximity of time and place. Therefore, the same FIR cannot stand against both the accused persons as they cannot be connected together so as to form the same transaction on the fact of this case. In view of above it is prayed that the accused no.-2 may be released from this case. In this point, Ld. Defence Lawyer has relied upon a decision reported in Criminal Appeal No.- 903 of 2022 in M/s. P Xxx Vs. The State of Uttarakhand passed by the Hon'ble Apex Court.

The Ld. PP vehemently opposes the petition. It is submitted that the Court is not bound to frame charge as given in the charge-sheet. At the time of framing charge, the Court must examine the entire materials on record and can frame charge under any section which will attract in respect of any particular accused. There are sufficient materials against this accused in CD and as such it is submitted that the petition is liable to be rejected.

I have carefully considered the submissions of Ld. Defence Lawyer as well as Ld. PP and Ld. Advocate appearing on behalf of the de facto complainant. I have also examined the CD including the statement of the victim/ the complainant recorded u/s 164 Cr.P.C. The CD gives out sufficient incriminating materials including the materials of abetment by the accused no.-2 for committing the offence by the accused no.-1. The FIR itself is also clear in this point. As soon as the charge-sheet has been submitted, a prima facie case has been made out against this accused person. On careful scrutiny, I find that the facts and the circumstances laid down in the decision relied upon by Ld. Defence Lawyer do not have any application in this case.

In view of my above discussion, I am not inclined to allow the accused no.-2 to be released or discharged at this stage.

**Contd...Pg.**

*The petition u/s 227 Cr.P.C filed on behalf of the accused no.-2 this day is **rejected on contest**.  
I make no order as to cost.*

*Fixing **22/08/2024** for appearance of both the accused persons and consideration of charge.  
CD be returned to the prosecution as there is no place to keep the CD in safe custody.*

*D/c by me.*

*Judge, Bench-II,  
City Sessions Court, Calcutta  
JO Code No. WB00656*