

Spl.Case No.08 /2023

Order No. 35

Dt. 06.05.2025

Sole accused Rakesh Rai is in J/C and is not produced.

Ld. Spl. P-P-in charge Smt.Babita Lama is also present.

The bail prayer of the accused dtd. 25.04.2025 is taken up for hearing.

Defacto-complainant and VG appeared and they raises objection regarding the bail prayer of the accused.

Ld defence counsel while moving the bail application submits that the prosecution's evidence has already been recorded ; the accused by adducing evidence has been successfully able to rebut the presumption U/s.29 of the POCSO Act 2012 and also considering the fact that the accused is in JC since more than 23 months, his prayer may be allowed in any condition.

On the other hand, the Ld. Spl.PP-in-charge raises objection by submitting that in the instant case there is no delay on the part of the prosecution in adducing evidence and the instant case is ready for hearing final argument, so the bail petition may be rejected.

Perused the CR. Considered.

It reveals from the CR that the accused is facing trial for the charged offence punishable U/s.06 of the POCSO Act 2012 and the prosecution evidence was closed on 21.06.2024 and after examination of the accused U/s 313 Cr.p.c the matter was fixed for defence evidence. Ultimately the defence evidence was closed on 22.11.2024 and thereafter the matter was fixed for hearing argument and part argument has already been heard from the side of the prosecution on 18.03.2025.

Order No 34/dtd. 25.04.2025 also reveals that further argument could not be heard on that day because of non production of the accused from JC either in physically or through electronic medium.

From the above mentioned facts it is crystal clear that the trial of the instant case has not been delayed on account of the prosecution and the trial is on the verge of completion.

So far as the submission of the ld defence counsel concerning Sec.29 of the POCSO Act 2012 is concerned, I am of the view that the merit of the same can only be considered at the time of judgment and not while considering a bail application.

Having regard to the above fact and circumstances as well as the dictum of the Hon'ble Apex Court that the fact of long detention cannot be the sole ground for considering the bail application of an accused and the Court has also to consider the magnitude of the allegation against the accused, I find not merit in the bail application. Thus, the same stands, rejected.

This date stands for hearing further hearing of the prosecution but at this stage the Ld.Spl.PP-in-charge prays for an adjournment on her personal ground.

Heard. Considering the ground of adjournment prosecution's prayer is allowed for the ends of justice as a last chance.

Accused is remanded to J.C till **05.06.2025**.

To **05.06.2025** for production and hearing further argument.

Both the parties are directed to come ready positively on the date fixed and no further adjournment shall be allowed on that day.

D/C by me.

SD/-Special Judge POCSO Act,
Kurseong.
JO Code No. WB00601.