

ORDER SHEET FOR MAGISTRATES RECORDS

District: Darjeeling

IN THE COURT OF : ADDITIONAL DISTRICT & SESSIONS JUDGE
KURSEONG, DARJEELING (W.B) – 734203.

SPECIAL CASE NO 11 / 2023

State
Vs
Rajiv Chhetriaccused

Order No.	Date	Order with signature of Magistrate	Office Note as to action taken order (if any) and date.
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Order No. 01
Dt. 01.08.2023.

Received one original case record arising out of Mirik PS Case No. 110/23 Dt. 31.07.2023 U/s 10 of POCSO Act along-with written complaint, formal FIR, memo of arrest, medical examination report of the accused and alleged VG and a prayer of the IO for recording Judicial Statement of the VG u/s 164 CrPC.
Perused the same.
Note in Special Case register.
Let the case be registered as Special Case.
Inform Ld. Special PP accordingly.
The accused Rajiv Chhetri produced under arrest along-with forwarding report of the IO.
The accused is taken into custody and remanded to J/C till further date of production.
A bail petition has been filed on behalf of the accused praying for his release in bail on the ground stated therein.
Let the same be kept with the record for hearing on the next date in presence of the defacto complainant/ VG and on production of the CD by the IO of this case.
Issue notice upon the defacto complainant calling upon her to appear on the next date and to file objection if any regarding the bail petition of the accused.
The IO's prayer for recording statement of the alleged VG by the Ld. Judicial Magistrate at the Kurseong Court u/s 164 CrPC is considered and allowed.
Ld. Judicial Magistrate Kurseong to record statement of the VG accordingly u/s 164 CrPC.
IO to produced the VG accordingly before the Ld. Judicial Magistrate Kurseong as an when he has been directed to produced the VG before him for the said purpose.
Fix. 09.08.2023. for production of accused, SR of notice, production of the CD by the IO and hearing of the bail petition and IO's report.
Call for the CD from the IO of this case.
Let a copy is this order along-with the case record be sent to the Ld. Judicial Magistrate Kurseong for his information and recording the statement of the VG u/s 164 CrPC.
Inform the IO accordingly for necessary action by supplying another copy of order to him.

D/c by me

.....Sd/-.....
Special Judge POCSO,
Kurseong.

Spl. 11 of 2023.
ORDER NO. 02.
DATE. 09.08.2023.

Today is the date fixed for production of accused, SR of notice, production of the CD by the IO and hearing of the bail petition and IO's report.

Sole accused Rajiv Chhetri is produced from the JC.

Having perusal of the order sheets of this case record and the report submitted by the IO it appears that although Order for recording statement of the VG was passed on 01.08.2023. requesting the Ld. Judicial Magistrate at Kurseong to record the Statement of the VG U/s. 164 Cr.P.C. but till date no such statement of the VG has been recorded by the Ld. Judicial Magistrate Kurseong U/s 164 Cr.P.C.

In this regard the order sheet of the said Ld. Magistrate goes to show that on 02.08.2023 he fixed the date of recording such statement of the VG on a very belated stage on 08.08.2023 violating the guidelines of the Honorable Courts for the same. Ld. Judicial Magistrate ought to have record the statement of the VG immediate after placing the Case record with copy of order before him, even within 24 Hrs from the said date but he fixed an unusual date without ascertaining any reasonable ground.

So the Ld. Judicial Magistrate at Kurseong is directed to record Statement of the VG U/s. 164 Cr.P.C. immediate after having knowledge of this order and he is also directed to be careful in future in recording statement of any VG U/s. 164 Cr.P.C. within a reasonable time preferably within 24 Hrs of order of the Special Court maintaining the guidelines of the Honorable Court in this regard.

Let a Copy of this order be sent to the Ld. Judicial Magistrate at Kurseong for his information and necessary action.

The Bail petition filed on behalf of the accused Rajiv Chhetri is now taken up for hearing in presence of both sides Counsels, the defacto complainant and the IO of this Case along with his CD and report. The defacto complainant in response to the Notice appearing before this Court today submits that she has objection against the bail petition of the accused.

Heard both sides Counsels.

Ld. advocate appearing on behalf of the accused relying on the decision and guideline of the Honorable Apex Court in Arnesh Kumar Vs State of Bihar and Anr and also the decision of Rajkumar and Ors Vs State of UP through Secretary Home submits that in this Case on the basis of the FIR of the defacto complainant the Police has started a case against the accused for the offence punishable U/s 10 of POCSO Act 2012, the punishment of which prescribed in the Act shall not be less than 5 Yrs but which may extend to 7 Yrs and shall also be liable to fine.

Since the punishment for the alleged offence is within 7 Yrs than the observation as well as guideline of the Honorable Apex Court in Arnesh Kumar Judgement is applicable in this Case but the record admittedly goes to show that without complying with the guidelines of the said Judgement regarding the provision of Sec. 41 (1)(b) Cr.P.C. the IO of this Case hastily arrested the accused without serving any notice upon him and without making any explanation or preparation of any checklist for arrest of the said accused ignoring compliance of the said provision. So from that technical fault on the part of the IO in compliance with the mandatory provision of Law the accused is entitled to be released on bail.

On the other hand Ld. Special PP submits that under the impression that the observation of the said Arnesh Kumar Judgement in Special Cases under POCSO Act is not applicable the IO could not follow the said provision during the arrest of the accused and the Ld. Court may pass any order as it deem fit and proper and she left the decision at the discretion of this Court.

In order to remove the doubt regarding the applicability of the guidelines of Arnesh Kumar Judgement in Special Cases under POCSO Act Ld. Advocate for the accused further submits that the decision of the Honorable Apex Court itself made it clear by adding further that "the direction shall not only apply to the Cases of 498A of the IPC or Sec. 4 of Dowry Prohibition Act, the Case in hand but also such cases where offence is punishable for a term which may be less than 7 Yrs or which may extend to 7 Yrs whether with or without fine". Beside the said Apex Court Judgement Honorable Division Bench of Allahabad High Court relying on the said decision of Apex Court in Rajkumar and Ors Vs State of UP through Secretary Home held that the offence under POCSO Act is also will come under the perview of the said decision and guideline of the Honorable Apex Court.

Having perusal of the materials of the record admittedly it appears that the IO of this Case immediate after registration of the Case on 31.07.2023 hastily arrested the accused on the same date on 31.07.2023. without complying with the provision of 41 (1)(b) Cr.P.C and the guidelines of the aforesaid decision of Honorable Apex Court and also without preparing any check list in accordance with the mandate of the said decision.

So considering the aforesaid submission of the Ld. Advocate of the accused and the Ld. Special PP regarding non compliance of the mandatory provision of Law and guidelines of Honorable Apex Court in making arrest of the accused and also keeping in mind the aforesaid direction of the Honorable Apex Court, I find nothing convincing to detain the accused in Custody for the purpose of investigation of this Case. Hence I am inclined to allow the prayer of the accused to release him on bail.

The accused Rajiv Chhetri is accordingly may find ad-interim bail of Rs. 5,000/- with 2 Sureties of Rs. 2500/- each of like amount subject to a condition that the accused shall co operate the IO in the investigation of this Case and shall not temper with the prosecution evidence, ID to JC till **23.08.2023**.

Fix. **23.08.2023**. for appearance/production of the accused and IO's report.

Let a copy of this Order be sent to the IO of this case through the IC Kurseong PS for their information and in future compliance with the decision and guideline of Honorable Apex Court as given in Arnesh Kumar Vs State of Bihar and Anr Case.

D/c by me.

.....Sd/-.....
Special Judge under POCSO Act,
Kurseong, Darjeeling.

Spl. 11 of 2023.
ORDER NO. 04.
DATE. 23.08.2023.

Today is the date fixed for appearance of the accused and IO's report.
Sole accused Rajiv Chhetri on Court bail is present by filing hazira and has filed a petition praying for confirmation of his interim bail on the grounds stated therein.
Received an interim report from the IO of this case.
Let it be kept with the record.
Heard both sides counsels.
Since the investigation of this case is in progress the interim bail of the accused is hereby extended till further date of his appearance.
Fix. **19.09.2023** For appearance of the accused and IO's report.
The IO has filed another petition praying for supply of the copy of the statement of VG Us 164 CrPC.
Prayer is considered and allowed.
Let the copy of statement of the VG U/s 164 CrPC be supplied to the IO of this case.
D/c by me.

.....Sd/-.....
Spl Judge POCSO, Ksg.

Spl. 11 of 2023.
ORDER NO. 05.
DATE. 19.09.2023.

Today is the date fixed for appearance of the accused and IO's report.
Sole accused Rajiv Chhetri on Court bail is present by filing hazira and has filed a petition praying for confirmation of interim bail.
Heard both sides counsels.
Interim bail is extended till next date.
Fix. **19.10.2023** For appearance of the accused and IO's report.
D/c by me.

.....Sd/-.....
Spl Judge POCSO, Ksg.

