

Sessions Case No. 529 of 2023

Present: Sri. Ajayendra Nath Bhattacharya
Judge, Special Court, POCSO Act, Contai
JO Code: WB00819

Order No: 24
Date: 04-10-2024

Today is fixed for passing order in respect of an application u/s 319 CrPC preferred by the State of West Bengal.

Ld. Special PP is present.

All the three accused persons on court bail are also present by filing attendance.

The record is taken up for passing order.

Perused the application u/s 319 CrPC. Considered the submissions made by the Ld. Special PP and the Ld. Counsel for the accused persons.

The Ld. Special PP submitted that as per the written information of this case one Toton Maity had purchased the new born baby of the victim of this case but he has not been arrayed as an accused in this case by the Investigating Officer of this case. As such, the Ld. Special PP prays to summon the said Toton Maity as an additional accused in this case.

Ld. Advocate for the accused persons on bail submits that the present accused persons has nothing to submit in this regard and leaves the matter to the discretion of this Court.

On perusal of the materials on record, it is found that one Toton Maity is said to have purchased the new born baby of this case from Prafulla Medical Centre, Egra. In the case of **Aarif and others v. State of Rajasthan and another** as reported in **2024 (1) AICLR 727 (SC)**, the Hon'ble Apex Court has observed that u/s 319 CrPC, though test of *prima facie* case is same, as that at time of taking cognizance, however the degree of satisfaction that is required is much stricter. In the present case, in spite of clear allegations being made in the written information against the said Toton Maity, the investigating agency had not arrayed the said Toton Maity as an accused person in this case and had submitted charge sheet in the case. This Court had considered the materials on record and had taken cognizance of the case on the basis of the materials collected during investigation and had taken cognizance on the basis of charge sheet filed by the Investigating Agency. At this stage, no new material has been produced by the prosecution to show the involvement of the said Toton Maity in this case. Moreover, the power u/s 319 CrPC can be exercised on the basis of evidence that has come on record. In the present case, the prosecution has not examined any witness till date As such, at this stage, this Court finds no merit in the prayer of the prosecution and the same stands rejected.

However, the prosecution is at liberty to make fresh application in this regard at the later stage of the proceedings if the situation so demands.

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Hence, it is

ORDERED

that the application filed by the State of West Bengal on 11-06-2024 is hereby considered and rejected.

To **13-12-2024** for consideration of charge.

Dictated and Corrected By:

Sd/-
Judge, Special Court
POCSO Act, Contai

Sd/-
Judge, Special Court
POCSO Act, Contai
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