

Cr. Misc. Case No. 395 of 2026
CNR No. WBHW0100 1024 2026
Present: Sri Mainak Dasgupta
Sessions Judge, In-charge, Howrah.
J.O. Code – WB01070

Order No.04 dated 10.03.2026.

The application u/S.483 BNSS arising out of Shibpur P.S. Case No. 34 of 2026 dated 22.01.2026 u/Ss. 69/115(2)/79/351(2)/3(5) of BNS, filed by the accused/petitioner namely, Muktar Ahmed @ Mukhtar Ahamed, is taken up for hearing.

SUBMISSIONS AND REASONS:

Ld. Advocate for the petitioner submitted that the accused petitioner is in custody since 15.02.2026. It was also submitted that the accused and the victim were in a love relationship but there was no physical relation that took place following any false promise of marriage. It was further submitted that whatever relation might have formed between the victim and the accused such was entirely consensual and such prolonged custody of the accused in the instant case has been serving against the ends of justice.

Ld. P.P has raised objection to the prayer.

Perused the T.C.R. and C.D.

Before proceeding, I find it proper to state that Ld. P.P. had submitted that the victim had remained present on 06.03.2026 and she was directed to remain present on today but in spite of such the victim has remained absent.

Considered the submission made by the Ld. Advocate for the accused and the Ld Public Prosecutor.

The detention of an accused in the course of investigation should not be equated with a sentence and should not be ordered as a mode of punishment. Hon'ble Justice Krishna Iyer, J., in Gudikanti Narasimhulu v. State [Gudikanti Narasimhulu v. State, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] was pleased to opine that "1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law".

If the complaint is perused it would appear that the victim has stated that she and the accused had a love affair and the accused had promised to marry her and thereafter on 11.10.2024 they had physical relation and even thereafter they had engaged in physical relation at many other places. It was further alleged that the accused and the victim had applied for registration of marriage and the preliminary process was done but at the time of final registration the accused refused to marry her and also ignored her phone calls. Therefore, it would appear that the victim herself had admitted that she and

the accused had a love affair. Furthermore, it would appear that the victim is aged about 24 years and had stated that she had read the complaint that was written in English language and she had also put her signature in English. Hence, it cannot be regarded that such victim was a rustic lady and who would not have been aware of the consequences of her acts.

Ld. Advocate for the accused submitted that the informant and the accused were in a consensual relationship for several years and from the complaint itself it vividly appears that both of them used to meet at various places and had physical relation and for which the alleged offense cannot be regarded to have been committed. Ld. advocate for the accused relied upon on the judgement cited in 2025 (2) AICLR 103 (SC) [Prashant Vs State of NCT of Delhi].

I have respectfully perused such and such a judgement does aid the accused in fortifying his prayer for bail. Furthermore, it appears that the victim had refused medico-legal examination. It might be argued that as the matter pertains to an offence of sexual intercourse after obtaining the consent fraudulently, there would be no evidence of forceful intercourse and therefore, refusal of the victim to undergo medico-legal examination would not justify the accrual of any adverse inference. It is true that in such circumstances, the medico-legal examination would not bring for any evidence of forceful intercourse but such would have shed light upon the question as to whether at all the victim ever had sexual intercourse. The Hon'ble Supreme Court of India in the case of State of Himachal Pradesh Vs Rajesh Kumar and cited in 2025 LiveLaw (SC) 297 was pleased to hold that "It is a well settled proposition of law that non allowance of medical examination by an alleged rape victim raises negative inferences against them".

Therefore, on all the consideration aforesaid, I find it proper to grant the relief as prayed for by the accused.

Hence, considering the above discussions and observations, the prayer for bail is allowed.

The accused be released on furnishing bond Rs.10,000/- with two sureties of Rs.5,000/- each to the satisfaction of Ld. Chief Judicial Magistrate, Howrah on condition that the accused shall not make any attempt to make any contact with the victim or any of her family members.

Let a copy of this order be sent to the Ld. C.J.M., Howrah.

L.C.R. and C.D. be returned.

The criminal Misc Case is disposed of.

The order be uploaded in the CIS without delay.

Dictated & corrected by me.