

In the court of Additional Sessions Judge, 1st Court, Uluberia, Howrah.
Special Case no. 104/2017
Bauria P.S. case No. 126/17 dated 02.07.2017
U/S 498A/376D/376(2)(f)/376(2)(i)(f)/506 of IPC & Section 6 of POCSO Act
Present : Shri Anirban Chowdhury
(JO Code: WB 00814)

Order no.48, dated 12.02.2025

Today is fixed for appearance of the accused persons and passing order in respect of the prayer for discharge submitted on behalf of the accused persons on 04.04.2024.

Accused persons are present filing *hazira*.

Record is taken up for passing order.

Submitting the petition dated 04.04.2024 accd. Persons, have prayed for their discharge from this case stating *inter alia* that :

- There are discernible contradictions in respect of the alleged offence between the FIR and statements of defacto complainant, victim and other witnesses recorded u/s 161 and 164 of Cr.P.C;
- There is no statement of the defacto complainant and victim regarding the allegation of rape.

Investigating officer submitted charge sheet in respect of offences punishable under sections 498A/376(d)/376(2)(f)/376(2)(i)(f)/506 of IPC and section 6 of POCSO act against the two accused persons.

Statements of the *defacto* complainant and other witnesses recorded under section 161 of CRPC on 28.03.22 does not reveal involvement of accused serial no. 3 and 4.

Statement of the victim recorded again on 02.04.2022 reveals the name of accused serial no. 3. That statement as well as the statement of the witness recorded under section 164 of CRPC remains silent about any role of accused serial no. 4.

In the written complaint defacto complainant alleged that on 01.07.2017 at about 2:30 a.m. when she returned from toilet she found that her room was bolted from inside. Forcing the door opened she found that the accused persons are committing rape upon the victim.

In the statement recorded u/s 161 of Cr.P.C victim narrated that in the night of 01.07.2017 she herself along with *defacto* complainant, her husband (accused Sl. No.2- hereinafter simply referred to as A2) and their child lay down in one room. Suddenly she woke up to find that her leggings has been rolled down to her knees and her shirt has been pulled up to her chest and the elder brother of A2 (accused Sl. No.1- hereinafter simply referred to as A1) is pressing her mouth. At that time defacto complainant went away to toilet and the door of the room was left ajar. A2 was biting the part of her body which she uses for urinating. Coming there *defacto* complainant cried out and seeing her A1 pushed her down to the ground.

Both *defacto* complainant and her parents stated that she called them from the phone of another brother of A1 and A2. Other witnesses are relations and friend of the father of *defacto* complainant.

Similar facts were narrated by *defacto* complainant and victim in their statements recorded u/s 164 of Cr.P.C.

Contd. Order no.48, dt. 12.02.2025

Date of birth of victim is 08.08.2003.

Scribe and another witnesses have deposed that it was erroneously recorded in the written complaint that the room in question was bolted from inside.

The mobile phone of the other brother of the accused persons was seized on 13.07.2017 between 18:25 hours to 18:45 hours. **However, no CDR or SDR was produced** (emphasis is mine).

Upon medico legal examination of the victim conducted on 03.07.2017 at 1:10 p.m. no injury was noted on extra genital body parts, breasts, labia majora/labia minora/fossa navicularies and fourchette and vagina. The column for genital examination has been left blank and the hymen has not been visualized. Doctor opined that no evident genital injury was noted to comment. Vaginal swab and smear was seized on 03.07.2017.

Wearing apparels of the victim was seized by I.O. at P.S on 03.07.2017 between 08:15 hours to 08:35 hours at P.S. being produced by *defacto* complainant.

A2 was arrested on 02.07.2017 at 22:15 hours and his medical examination was conducted on 13.07.2017 at 1:30 p.m. Urethral swab collected from A2 was seized on 13.07.2017 between 13:45 hours to 14:10 hours.

The vaginal swab and smear, urethral swab and smear and wearing apparels of the victim were received at State Forensic Science Laboratory on 02.08.2017.

Vide order No. 11 dated 05.09.2017 warrant of arrest was issued against A1. Thereafter charge sheet was submitted on 14.09.2017.

Subsequently anticipatory bail was granted to A1 vide order dated 21.11.2017 passed by Hon'ble Court in CRM No. 11275 of 2017. In view of such order this court enlarged the accused/petitioner on bail vide order No. 23 dated 23.04.2018.

Till date report from FSL has not been received.

That report must be looked into before considering the prayer.

Hence, I.O of this case /O.C. Bauria P.S is directed to produce such report before this court in accordance with law on or within 28.04.2025.

To date for submission of report, appearance of the accused persons and further order if any.

Let a copy of this order be sent to the I.O. of this case as well as O.C for information and necessary action.

Dictated and recified by me

Sd/-

Additional Sessions Judge,
1st Court, Uluberia

Sd/-

Additional Sessions Judge,
1st Court, Uluberia