

*In the court of Judge (Special Court) POCSO Act at Basirhat, North 24 Parganas.*

**Present:-** *Smt Leena Goldar , J.O Code : WB 00894*  
Judge, Spl(POC) Court ,  
Basirhat, Dist.- North 24 Parganas.

*Spl.(POCSO) Case No.37/2021*

41/ 26.09.24

Accused Mannan Mollick is produced from J.C and remanded to J.C till .

Other accused persons namely Rouf Mallick, Rajjak Mallick and Sahanara Bibi are present by filing hazira .

Ld. Spl. P.P is present and files hazira for the state. Ld. advocate for the accused persons are also present .

Accused person namely Mannan Mollick is produced from J.C . He is taken into custody and remanded to J.C till next date.

An application has been filed on behalf of the accused person namely Mannan Mollick praying for bail on the ground stated therein.

At the very outset, Learned Advocate for the accused person submits before this Court that no such application u/s 482/483 BNSS is either pending and/or disposed of in the negative before any higher forum .

Ld Advocate for the present accused person moves the bail petition on the ground stated in the petition.

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Ld. Spl. P.P submits that as per xerox birth certificate of the Victim Girl , she is 16 years of age. He raises strong objection against the bail prayer pointing out the materials in C.D.

Heard both sides. Perused the FIR and materials on C.R and C.D .

In this case Prima facie case u/s 376/323/120B/506/34 IPC and sec. 6/17 POCSO Act has already been established against the four charge sheeted accused persons including this accused person. The allegations against the accused, who is the biological father of the Victim Girl is grave and serious in nature. Therefore, considering the age of the victim girl and the materials in C.D bail prayer stands rejected.

However, at the time of submission , the ld advocate for the accused has submitted that he on 11.01.2023 filed an application for serving him the copies of 8 documents and out of those 8 documents he has already received four documents and now he needs the report of termination of Pregnancy Test of the Victim Girl at Bidhan Nagar Sadar Hospital , Report of Victim Girl produced before Basirhat District Hospital for examination and USG Test of Victim Girl and the seizure list of seized urethral Swab and vaginal swab of the Victim Girl .

On the basis of submission of the Ld. advocate for the accused, this court on 14.06.24 passed an order directing the I.O of this case to produce the pregnancy report and USG report of the Victim Girl along with the seizure list/lists showing the seizure of urethral swab and vaginal swab of the accused and the Victim Girl.

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Till now the I.O is not present before this court to explain the absence of these documents as mentioned by the Ld. advocate for the defence. Moreover it is found from the materials on record and C.D that the I.O of this case did not collect the original birth certificate of the Victim Girl nor he inquired about its genuineness. In cases under POCSO Act first the prosecution needs to prove the age of the Victim Girl and if the said foundation stone is not collected during investigation then the prosecution will not be able to prove its case . There is gross negligence on the part of the I.O. The Charge Sheet was duly forwarded by the O.C Baduria P.S but he should not mechanically forward the Charge Sheet without going through the contents of the same . POCSO cases are of special nature and therefore it is settled position of law that such type of cases should be supervised by the superior officers of the police. Thus, it appears that there is gross negligence of the IO of this case and also of O.C Baduria P.S. It also appears that DSP , DEB of Basirhat P.D who is in charge of overall supervision of POCSO cases, is not supervising the POCSO cases properly. Today in special POCSO case no. 2/16 and POCSO case no. 54 of 2019 it is found that birth certificates of the Victim Girl were not properly collected and submitted before this court by the concerned I.Os. This court is getting numbers of cases where either the original birth certificates are not collected by the I.Os or those are not properly submitted in accordance with law. It appears that there is gross lack of supervision of DSP,DEB Basirhat P.D in supervising the POCSO cases . Therefore, he is also directed to remain present before this court to explain the anomalies occurred in this case .

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It is settled position of law that the de facto complainant should not be prejudiced due to the ignorance or negligence of I.O to investigate the case properly. Hence, the I.O of this case and in his absence in the concerned P.S, the O.C of this case is directed to take appropriate actions in accordance with law so that the original birth certificate of the Victim Girl can be proved before this court to establish the age of the Victim Girl.

Moreover, during submission of the Ld. advocate of the accused Shri Arpan Halder has submitted that when the divorce took place between the D.C and accused then in such *talaqnama* the Ld. Spl. P.P Golam Mostafa identified the accused person Mannan Mallick and hearing the said submission of Mr. Arpan Halder and perusing the copy of that *talaqnama* the Ld. Special P.P Golam Mostafa has submitted that the said identification took place 7 years ago and now he cannot recollect about the said identification but even though after hearing the submission of Ld. defence counsel and perusing the document he has submitted today, he will retire from this case and will return the C.D of this case and accordingly after hearing of this case Ld. Special P.P Mr. Golam Mostafa has returned the C.D. Let the said C.D be handed over to the P.P in charge Gautam Banerjee until the appointment of new Special P.P.

Considering the facts and circumstances of this case this court finds no other option but to request the Ld. District P.P to appoint a new Special P.P of this case. Considering the peculiarity and complications arises in this case, the District P.P is requested that he should appoint a Special P.P from the Panel of Barasat Court for the purpose of this case.

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Thus, on the next date the I.O of this case, O.C Baduria P.S and DSP DEB of Basirhat P.D will remain present before this court at 10.30 a.m to explain their respective action taken with regard to the investigation of this case. The I.O of this case and in his absence O.C of this case will apprise this court about the action taken by him to establish the age of the Victim Girl .

Fix **12.11.2024** for production of the accused , appearance of the police personnel and the appointment of new P.P from the panel of Spl. P.P at Barasat District Court . ( *Annual Vacation intervening* ) .

Let the copies of this order be sent to S.P., Basirhat P.D and District P.P for their information and necessary action.

Let the copies of this order be sent to I.O of this case , O.C Baduria P.S and DSP,DEB, Basirhat P.D through S.P, Basirhat P.D for their information and necessary action.

dictated & corrected by me

Judge,Spl. Court (POCSO Act )  
Basirhat, North 24 Parganas

Judge,Spl. Court (POCSO Act)  
Basirhat, North 24 Parganas

