

JJB Case No: 03 of 2020
CIS No. Special Court Cases/3/2020
CNR No: WBSP01-000500-2020
Present: Subhra Som Ghosal (J.O Code: WB00984)

Order No. 41, dated: 10-10-2023.

The CCL has been produced today from the Observation Home. As stipulated by the previous order today is fixed for further evidence on behalf of the prosecution and further order.

At this stage a bail application has been filed on behalf of the CCL.

Copy served on the Ld. Public Prosecutor-in-charge.

On call the Ld. Advocate for the CCL as well as the Ld. Public Prosecutor-in-charge appointed for this case are found to be present and ready for hearing.

Hence the case record is taken up for hearing.

The Ld. Advocate for the CCL in order to set the context of his submissions, at the very exordium submitted that as per provision of Section 19, 20 and 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015 the petitioner has to be dealt with as per provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and maintaining on this it was argued by the Ld. Advocate for the CCL that as per Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 bail is the right of the CCL and it cannot be rejected at the whims of the prosecution or on the point of the gravity of the offence. It was further argued by the Ld. Advocate for the CCL that evidence of the alleged victim started on and from 19-01-2021 but the evidence could not be completed as yet and the CCL is in custody for the last 1370 days. Pinning reliance on this aspect, it was reiterated by the Ld. Advocate for the CCL that in this case the CCL is already in custody for near about three years and hence he must be released on bail.

The prayer was opposed by the Ld. Public Prosecutor-in-charge appointed for this case. It was argued by the Ld. Public Prosecutor-in-charge that in this case the CCL has been tried as an adult and he has been indicted with the allegations of rape of a victim who is mentally challenged and charge has already been framed and now the victim is now being examined, and granting bail at this stage will jeopardize the course of trial. In all her fairness the Ld. Public Prosecutor-in-charge in charge of this case submitted that there has been delay in concluding the evidence of the victim but such delay is due to the reason of physical challenges of the victim and this Court on the previous date has passed necessary order to that effect. In refutation to the point raised by the Ld. Advocate for the CCL as regards detention of the CCL for more than three years, it was argued by the Ld. Public Prosecutor-in-charge that Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has specifically provided that the CCL can be moved to a place of safety after he has attained the age of twenty one years and there after to any Correctional Home and relying on this provision, the Ld. Public Prosecutor-in-charge submitted that when the CCL is to tried as adult, he can be imposed with any punishment apart from death and imprisonment for life and hence the argument that she cannot be detained after a period of three years does not merit any consideration and the bail prayer may be rejected.

The CD has been produced today. I have meticulously inspected the CD and

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traversed the entire gamut of this case staying alive to the points mooted before me.

At the very inception it is required to be mentioned that in this case the adjudication done by the JJB under section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been accepted by this Court and the CCL is being tried as an adult. As per Section 19(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 13(8)(i) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 this Court shall follow the procedure prescribed by the Criminal Procedure Code 1973 for trial of sessions cases and maintain a child friendly atmosphere. As per Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015 no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release. Hence the submission of the Ld. Advocate for the CCL that the petitioner after undergoing three years of detention is entitled to get bail, cannot be countenanced as this Court is having the jurisdiction to impose any sentence, even more than three years, apart from sentence of death or imprisonment for life and the CCL has to be tried following the modalities of sessions trial.

In order to espouse the cause of granting bail to the CCL the Ld. Advocate for the CCL has emphasized on the period of detention of the CCL. Such ground cannot be a ground for allowing the bail prayer without considering the entire gamut of this case and facts unique to the CCL. While coming to the materials available in the case record as well as CD it is limpid that the offence is grave and the process of examination of the survivor has already commenced. Definitely there has been little development in respect of the recording of evidence of the survivor, but this Court cannot be oblivious of the challenges faced by the survivor. After assuming charge of Court necessary order has been passed by me on the previous date so that evidence of the survivor can be recorded smoothly. Given the status of the witness vis-a-vis the CCL, this Court is of the opinion that release of the petitioner at this stage will defeat the ends of justice.

Hence based on the above delineations, the prayer for bail stands rejected at this stage.

A report has been received from the Secretary, DLSA, South 24 parganas at Alipore. From the report it is evidence that the survivor has not yet been given any compensation under the victim compensation scheme and the reason has been ascribed to nonavailability of the charge-sheet and Formal FIR. It is quite unfortunate that despite submission of charge-sheet several years back, it has not been made available to the DLSA. Hence the Investigating Officer is directed to communicate with the DLSA, South 24 parganas at Alipore and provide all documents and/or all informations so that there is no further impediment for taking forward the proceeding of Victim Compensation Scheme.

Let a copy of this order sheet be sent to the Investigating Officer as well as to the O/C Panchasayar police station for their information and compliance.

One application has been filed by one Arpita Roy Chowdhury, District Counselor

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manifesting the fact that the previous order was communicate on 06-10-2023 but due to shortage of time she could not interact with the survivor and has prayed for an accommodation.

In view of such prayer of the District Counselor the case is adjourned on this day.

To 30.11-2023 for production and further examination of the survivor.

The District Counselor shall ensure compliance of the order dated 26-09-2023 in letter and spirit. The DSWO, South 24 parganas at Alipore is directed to stay present on the next date before this Court.

Let a copy of this order sheet be sent to the DSWO, South 24 parganas at Alipore for his information and compliance.

Typed to the dictation directly;
corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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