

In the Court of Judge, Special Court & 2nd Addl. Sessions Judge, Alipore

Special Case No. 73/2024

CNR – WBSP01-002657-2024

Ref.: Sarsuna PS Case no: 28/2024 Dated : 22.02.2024

U/s 354B/506 of I.P.C read with Sec 08/10 of the Protection of Children from Sexual Offence Act, 2012.

Present :Sudipta Bhattacharjee (JO Code - WB00794)

Judge, Special Court & 2nd A.S.J.,

Alipore, South 24-Parganas.

State Vs. Tapan Bhuiya

Order No.01

Dt. 23.02.2024

Accused **Debasish Majumder** (44 years) is brought under arrest and produced before this Court today.

Register the same as Special Case No. 73/2024 under sections 354B/506 of I.P.C read with Sec 08/10 of the Protection of Children from Sexual Offence Act, 2012.

A bail petition has been filed on behalf of the accused.

Heard both sides.

Learned lawyer for accused submitted that the accused has been falsely implicated in this case. He has submitted that on the very date the accused filed a specific case against the husband of the defacto complainant under section 324/326 of IPC and he was utterly injured. He has drawn my attention that the I.O. failed to comply the provision under section 41A of Cr.P.C before arresting the accused. The accused is innocent and has been implicated in this case falsely. Thus he prayed for bail to this accused.

Learned Special P.P-in-Charge raised objection.

Perused the petition, CD and other available materials on record.

It is a case u/s 354B/506 of I.P.C read with Sec 08/10 of the Protection of Children from Sexual Offence Act, 2012. In this case the maximum period of punishment is within seven years. In such cases before arresting any accused person the Investigating Officer is duty bound to serve notice u/s 41A Cr.P.C and it is mandate of law. The Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar & ANR and Satender Kumar Antil Vs. Central Bureau of Investigation & ANR Cases specifically directed some directives which should be followed by the Investigating Agency. From the forwarding report it transpires that the accused person was beaten by wooden stick by the husband of the defacto complainant and on the basis of the said complaint, filed by the accused a specific case that is Sarsuna P.S. Case No. 29 dated 22-02-2024 under section 324/326 of IPC was started against the husband of the accused. It

Special Case No. 73/2024
CNR – WBSP01-002657-2024

Contd. Order No.01 Dt. 23.02.2024

appears that the accused was medically treated at 4.30 p.m. initially over the injury of scalp. Stitch was given and dressing was done. The I.O. failed to satisfy the Court as to when the notice under section 41A of Cr.P.C. has been served upon the accused. From the Memo. of Arrest, it appears that the accused was arrested on the same day that is 22-02-2024 at 16.05 hours at P.S. The present case was started at about 17.10 on the same day that is 22-02-2024 hours that means the accused was arrested long before starting of the case. If that be so, when the I.O. has served the notice under section 41A of Cr.P.C upon the accused, it remained unanswered. On plain perusal of the forwarding report and the first information report, it reveals that the accused was arrested before starting of the case.

Having heard both sides and considering all facts and circumstances including the discussion made above and considering all available materials in CD, I am inclined to enlarge the accused person on interim bail.

Accordingly, accused person namely **Debasish Majumder** shall be released on **interim bail** of **Rs. 2,000/- (rupees two thousand only)** with two sureties of **Rs.1000/- (rupees one thousand only)** till 12.06.2024 subject to satisfaction of learned C.J.M Alipore **with condition to attend the Court regularly** i.d to J.C till 07.03.2024.

If on bail to 12.06.2024 for appearance of accused and I.O's report.

Since the I.O has not followed the directives of the Hon'ble Supreme Court in respect of section 41A of Cr.P.C he is directed to file show cause as to why necessary order shall not be passed against him.

At this stage the I.O has made prayer for recording statement of the VG u/s 164 Cr.P.C.

Heard learned Special P.P. Perused the prayer.

Prayer of the I.O is considered and allowed for the purpose of investigation.

Learned A.C.J.M, Alipore is requested to record the statement of **victim girl** u/s 164 Cr.P.C either personally or by deputing any

Special Case No. 73/2024
CNR – WBSP01-002657-2024

Contd. Order No.01 Dt. 23.02.2024

other Magistrate within 48 hours and send the same before this Court as early as possible.

The I.O. of this case is directed to take further instruction from the learned Magistrate regarding the production of the victim girl for recording her statement.

Supply a copy of the statements to the I.O as and when the same is received.

The Professor & HOD, Forensic and State Medicine, SSKM Hospital, Kolkata is requested to conduct the medico-legal examination upon the victim girl and send the report as early as possible.

The I.O is also directed to produce the VG to the concerned hospital on the scheduled date.

Inform the learned Additional Chief Judicial Magistrate by sending a copy of this Order along with photocopy of written complaint and formal F.I.R.

To date i.e. 12.06.2024 for appearance of accused, I.O's report and for filing show caused by the I.O.

Return CD.

D/c by me.

Sd/-

Judge, Special Court &
2nd A.S.J., Alipore

Sd/-

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2nd A.S.J., Alipore.