

**CNR No: WBSP01- 007331-2024**

Present: Subhra Som Ghosal

J.O Code: WB00984

**Sessions Case No: 11 (06) of 2024**



**Order No. 05, dated: 18-07-2024.**

As stipulated by the previous order today is fixed for production, further hearing of the bail petition filed by the accused person namely **D.**

The accused person has been produced from Correctional Home.

On call the Ld. Advocate for the accused person as well as the Ld. Special Public Prosecutors-in-charge are found to be present. The Ld. Advocate for the de facto complainant was also present.

The investigating officer is present with the CD.

Hence the bail petition is taken up for further hearing.

Ld lawyer for the accused person at nidificated his argument on the technical aspect of legality of the detention of the accused person. It was astutely expounded by the Ld. Advocate for the accused person that in the first charge-sheet this accused person was shown as not charge sheeted, yet the accused person continued to be in custody. Reliance on this aspect it was argued by the Ld. Advocate for the accused person that this custody of the accused person was absolutely illegal, and this Court must intervene and undo the wrong that has been perpetrated on the accused person. It was also argued that this accused person initiated an FIR with the allegations of rape and such investigation is still pending, yet in this case the investigating officer has drawn a conclusion that the allegations of rape are false and actually the victim has been detained in custody, which is illegal per se and cannot be countenanced by this Court. Castigating the conduct of the prosecution it was vehemently argued by the Ld. Advocate for the accused person was throughout the time in touch with the police then how she could have hatched the alleged conspiracy is beyond every reasoning, yet the accused person has been made to suffer the ignominy of arrest and illegal incarceration. In the lights of the above observations the Ld. Advocate for the accused person submitted that it is the duty of this Court to hoist the personal liberty of the accused person by nullifying the illegality that has been perpetrated against the accused person and she should be released from custody.

The prayer for bail was vehemently opposed by the Ld. Special Public Prosecutors-in-charge. The Ld. Advocate for the de facto complainant

also opposed the bail prayer. It was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that there are direct materials against the accused person and basically this accused person with the help of the accused persons have orchestrated the entire illegal design. It was further argued there has been no illegality in keeping the accused person in custody as the accused person was not merely "not charge-sheeted". The investigation in respect of the accused person was going on after her arrest and for that reason through the charge-sheet the other accused persons in respect of whom the investigation was complete were indicted and the investigation was kept open in respect of this accused person and eventually charge-sheet in respect of this accused person was also submitted. It was also submitted by the Learned Public Prosecutor-in-charge that in this case there have been some irregularities in giving separate Sessions number but there have been no illegalities which can inure to the benefit of the accused person. It was further submitted by the Learned Public Prosecutor-in-charge that the social milieu of this case and its ramification need to be considered by this Court and in a case of this nature if the accused person is shown leniency in that event, it will give impetus to the accused person who conspired to illegally frame a person by manipulating the stringent provisions of rape. In summation the Learned Public Prosecutor-in-charge prayed for rejection of bail prayers.

The CD has been produced today. I have passionately traversed the entire gamut of this case and have also inspected the materials in the CD with the same vigour in order to aptly answer the question mooted before this court.

From the case record transmitted by the Learned Additional Chief Judicial Magistrate, Alipore it is axiomatic that by order dated 23.04.2024 the case record arising out of Netaji Nagar PS Case No. 250 of 2023 as against nine accused persons was committed to the court of Learned District and Sessions Judge, South 24 parganas and such order specifically mentions that the case record was split up as against accused person No. 10 namely 'D' i.e. the present accused person. The accused person namely 'D' was remanded to judicial custody till 7th May 2024. Such custody of the accused person was from time to time extended by the Learned Additional Chief Judicial Magistrate, Alipore and from order dated 26th of May 2024 it has transpired that a supplementary chargesheet was filed against the present accused person. From the said order it is also clear that

cognizance was taken for commission of the offences mentioned in the supplementary chargesheet as against the accused person No. 10 i.e. accused person namely 'D' and the accused person was remanded to judicial custody till 04th of June 2024. From order dated 06th of June 2024 it has transpired that copy as per section 207 of the Code of Criminal Procedure, 1973 was served upon the accused person and the Learned Additional Chief Judicial Magistrate, Alipore directed transmission of the case record to the learned Sessions Judge, Alipore for trial. On the selfsame date another order was passed u/s 209 of the Code of Criminal Procedure, 1973 the case record was again committed to the Learned District & Sessions Judge, South 24 parganas. All these orders have been passed in ACGR Case No. 6282 of 2023. On receipt of the case record from the Learned Additional Chief Judicial Magistrate, Alipore the case has been numbered as S.C 11 (06) of 2024 [CIS registration No. 226 of 2024]. Thereafter the case record has been transferred to this Court trial by the Learned District Judge, South 24 parganas vide order dated 10-06-2024.

The predicament is accentuated further when these facts are considered in juxtaposition with S.C No. 11 (05) of 2024 which is also pending with this Court and arises out of the same police station case i.e. the same FIR. As has already been mentioned in this order, from the case record transmitted by the Learned Additional Chief Judicial Magistrate, Alipore as well as from the case record transmitted with S.C No. 11 (05) of 2024 it is limpid that by order dated 23.04.2024 the case record arising out of Netaji Nagar PS Case No. 250 of 2023 as against nine accused persons was committed to the court of Learned District and Sessions Judge, South 24 parganas. After receiving such case record, the Learned District & Sessions Judge, South 24 parganas registered the same as S.C No. 11 (05) of 2024 and it was transferred to this Court for trial. Hence two Sessions Cases have been registered out of the same FIR. But registration of two Sessions Cases has not prejudiced the accused person in any way.

Now coming to the aspect of the alleged illegal detention of the accused person. From the charge-sheet which was initially file it can that the investigating officer in specific terms manifested that the investigation in respect of this accused person was going on although there were prima facie materials against her. Hence it is not a case where section 169 of the Code of Criminal Procedure, 1973 was invoked as against the accused person. Hence her compulsory discharge from custody cannot be the inevitable step which ought to

have been resorted to. Rather I find the recourse adopted by the investigating officer can be justified taking the ratio-cination adhered to by the Hon'ble Supreme Court in ***CBI Vs. Kapil Wadhawan and Anr. (2024) SCC Online SC 66***. Hence the argument of illegal detention of the accused person cannot be supported by this Court.

While coming to the materials in the CD it can be noticed that there are sufficient materials which irrefutably indicates towards the gravity of the alleged offence and this aspect strongly militates against the bail prayer. The accused person has been indicted with the allegations of creating a veil of deception and manipulating the system masked by the veneer of rape. The allegations against the accused person are clear: to subvert justice, to twist the law into a weapon to serve her sinister agenda. The CD has prima facie revealed that the accused person has the propensity of fabricating evidence and concocting tales that ensnare the innocent. Hence this aspect of this case must be decided against the accused person.

Definitely investigation as regards the rape case is pending and a Writ Petition being WP No. 3676 of 2024 is also pending in relation to that investigation, but while staying confined to the materials of this case, I am convinced that there are prima facie materials against the accused person.

Hence based on the above delineations I find that it is not a fit case where leverage of bail should be extended to the accused person and as an obvious outcome the prayer for bail as manifested by the accused person namely **D** stands rejected at this stage.

At this stage the irregularities manifested above need to be addressed. It is true that law recognizes common trial for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code, especially when both the charge sheets against the accused persons relate to the same FIR i.e. Netaji Nagar police station Case No. 250 of 2023. It can also be gathered from the circumstances of this case as well as the Hon'ble Supreme Court case that the offence alleged of in both the cases are same and there is unity or proximity of place, continuity of action, commonality of purpose or design. However, due to inadvertence two separate Session case numbers have been allocated. This must not be allowed to continue. In this regard it is required to be mentioned that fair trial is the right of the accused person, and this Court is required to see whether the act of this Court will prejudice the accused or not. In adjudging the question of prejudice, the fact as to whether he/she has

been given sufficient opportunity to defend himself/herself or was reasonably/likely to have been misled in the circumstances of any particular case, needs to be considered. If it was not, then there is no question of prejudice.

In this case starting two Sessions cases out of the same FIR has not prejudiced the accused person in any way. On basis of the above delineations this Court is of the view that this Sessions Case which arises out of Netaji Nagar police station Case No. 250 of 02023, which is basically an offshoot of Sessions Case 11 (05) of 2024 be amalgamated Sessions Case No. 11 (06) of 2024.

Note in germane register and CIS.

B.C to comply.

The custody memo of the accused person be modified accordingly, and a fresh custody memo be issued.

The accused person, namely **D** is remanded to J/C and on the next date she should be produced in connection with Sessions Case No. 11 (05) of 2023.

Return CD. Call for CD.

A copy of this order in PDF/PDFA format be uploaded to the server following the modalities of Cr.R.O of the Hon'ble High Court [since amended by Notification dated 15-01-2015].

Typed to the dictation directly;  
corrected on the system.

Sd/-Subhra Som Ghosal	Sd/-Subhra Som Ghosal
Additional District & Sessions Judge,	Additional District & Sessions Judge,
01 <sup>st</sup> Court, Alipore, South 24 Pgs.	01 <sup>st</sup> Court, Alipore, South 24 Pgs.