

Special Case No.281/2023
CNR – WBSP01-012998-2023

Ref.:Jadavpur PS Case no: 150/2023 Dated : 11.08.2023

U/s 302/34 of I.P.C read with Sec 12 of the Protection of Children from Sexual Offence Act 4 of the West Bengal Prohibition of Ragging in Educational Institute Act, 2000

Present :Sudipta Bhattacharjee (JO Code - WB00794)
Judge, Special Court & 2nd A.S.J.,
Alipore, South 24-Parganas.
State Vs. Sourav Chowdhury & Ors

Order No.04

Dt.25.09.2023

Accused persons namely **1. Sourav Chowdhury, 2. Dipsekhar Dutta, 3. Manotosh Ghosh, 4. Asit Sardar, 5. Saptak Kamilya, 6. Md. Asif Afzal Ansari, 7. Ankan Sarkar, 8. Md. Arif, 9. Sumon Naskar, 10. Satyabrata Roy, 11. Sk. Nasim Akhtar and 12. Himangshu Karmakar** are produced from J.C through VCS. They are remanded to J.C till 07.10.2023.

Mr. Gopal Chandra Halder, learned Sr. advocate of Alipore has been appointed as Special Public Prosecutor by LR, West Bengal. Smt. Madhabi Ghosh (Maity) learned advocate has been requested to to assit Mr. Gopal Chandra Halder in conducting the case. Let it be kept with the record.

The accused No.5,6,7 & 10 have not filed any bail petition.

Separate bail petitions have been filed on behalf of the accused no.1. Sourav Chowdhury, 2. Dipsekhar Dutta, 3. Manotosh Ghosh, 4. Asit Sardar, 8. Md. Arif, 9. Sumon Naskar, 11. Sk. Nasim Akhtar and 12. Himangshu Karmakar.

Heard. both sides.

Ld. Advocate for the accused no.11. Sk. Nasim Akhtar and 12. Himangshu Karmakar submitted that the accused Nasim Akhtar was called u/s 160 Cr.P.C notice by the I.O and after interrogation he was arrested. The learned lawyer for these accused also submitted thaton the basis on the mere complicity the accused persons were arrested and the P.C was not fruitful. Thus he prayed for bail on any condition.

Ld. Advocate for the accused no. 4. Asit Sardar submitted that he has been also implicated falsely in this case on the basis of mere complexity. Thus he prayed for bail on the health ground.

Ld. Advocate for the accused 1. Sourav Chowdhury submitted that though he has been FIR named accused person but there is hardly any involvement in commission of offence. He helped the victim to get admitted in the hostel of Jadavpur University Campus. Thus he prayed for bail on any condition.

Ld. Advocate for the accused no.8. Md. Arif submitted that this

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accused was arrested on the complicity ground and nothing was transpired in his forwarding report. Thus he prayed for bail on any condition.

Ld. Advocate for the accused no.9. Sumon Naskar submitted that he has been falsely implicated in this case merely on the complexity ground. Thus he prayed for bail on any condition. Learned advocate for accused by filing a separate petition further submitted that the accused suffered from various medical ailments. Thus he prayed for proper treatment in Correctional Home.

Ld. Advocate for the accused no. 2. Dipsekhar Dutta and 3. Manotosh Ghosh submitted that they are totally innocent and only complicity has been transpired. Nothing was recovered from their possessions. Thus he prayed for bail on any condition.

All the petition for bail are taken up for hearing.

Both the Ld. Special P.P Mr. Gopal Chandra Halder and Mrs. Madhabi Ghosh Maity raised strong objection.

Learned lawyer for defacto complainant by filing a new vokalatnama appeared before this Court and raised objection against the prayer for bail.

Perused the C.D and materials on record.

Learned Special P.P submitted that it is ordinary case of a murder but he was one of talented scholar at Jadavpur University. It is not only the loss to the University but the State as a whole has suffered due to the death of the victim.

Fact remains that it is not an ordinary case of murder. Initially the case was investigated by the police but subsequently it was handed over to DD, Lal Bazar, Homicide Squad. A 17 years old boy came to the hostel with a dream of his life but he was tremendously tortured and subsequently he was found dead in naked condition. The investigation is going on. The Investigating Agency has also prayed for custodial interrogation of the accused. Thus, it is not apt stage to release the accused persons on bail. Considering all the facts and circumstances and materials available on record I am not inclined to release these accused persons on bail. Accordingly bail petition of these accused persons stands rejected.

At this stage learned advocate for accused no.6 Asif Afzal Ansari by filing a petition has submitted that he has been suffering from facial palacy and he is undergoing continous treatement for such

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ailment. Thus he prayed for passing necessary direction upon the authority of correctional to take accused / petitioner to Bangur Hospital in the Institute of Neurology for appropriate treatment.

Learned advocate for accused no.9 Sumon Naskar by filing a separate petition prayed for necessary direction to the Superintendent of concerned Correctional Home for proper treatment to the accused.

Learned advocate for accused no.7 Ankan Sarkar by filing a separate petition prayed for necessary direction to the Superintendent of concerned Correctional Home for proper treatment to the accused.

It appears from the submission of the learned lawyer for three accused persons that they are suffering from different ailments. In such circumstances the Superintendent of Presidency Correctional Home is directed to take appropriate steps for their treatment and to submit a report by date fixed.

Let a copy of this order be sent to Superintendent of Presidency Correctional for information and taking necessary action.

Learned lawyer for accused no.7 Ankan Sarkar filed a petition u/s 41D of Cr.P.C prayed for allowing learned conducting advocate namely Tuhin Sen to be present during the interrogation of the accused / petitioner no.7. Learned advocate for other accuseds have prayed for adopting the petition u/s 41D of Cr.P.C.

Perused the petition filed by learned advocate Tuhin Sen. Heard both sides. Considered.

In a case reported in Enforcement Director Vs. Arijit Chakraborty & Ors, the Hon'ble High Court, Calcutta held, "the purpose and object of introduction of section 41 D of Cr.P.C is to ensure the fundamental right of citizen enshrined in article 21 of Constitution of India. Such liberty cannot be curtailed likely. At the same time it is duty of the Court to strike balance between the right of citizen for being represented by an advocate during investigation and trial and the power of Investigating Agency to carry one proper investigation to unearth the truth and collect the evidence against perpetrator of a crime punishable under any Penal provision of statue." Therefore, it held that section 41D Cr.P.C does not mean that the advocate of the choice will be permitted to be present in course of entire interrogation.

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In a case Sr. Intelligence Officer, Director of Revenue Intelligence V Jugal Kishore Sharma, it was held that an accused is not entitled to have present during interrogation but can “watch proceeding from a distance or from beyond a glass partition but not within hearing distance.” This decision goes towards making the presence of the lawyer a feature of Tokenism, for the role of the lawyer is to ensure a check on the power of the police during the course of interrogation and to ensure the accused is not coerced.

Here in this case the prayer has been made by the Investigating Agency to interrogate the accused in Correctional Home. The Correctional Home is guarded by the Wardener who are direct control of the Superintendent of Correctional Home. So there is hardly any question coercion upon the accused into incriminating himself. In these circumstances the SIT member is permitted to interrogate the accused persons in presence of Controller or authorized person of Presidency Correctional Home. The learned advocate namely Tuhin Sen is permitted to watch the proceeding from the distance place i.e. through VCS without interfering in the interrogation. Thus, prayer of learned advocate Tuhin Sen is allowed to that extent that he may be permitted to watch the proceeding through VCS which is not audible to the learned advocate.

The Controller is directed to make necessary arrangement in this regard allowing learned advocate Mr. Tuhin Sen to watch the proceeding through VCS. The prayer of other accused persons for attending at the time of interrogation of the accused by SIT member is rejected as because nobody has made any prayer who will be represented on behalf of respective accused persons.

Let a copy of this order be sent to the Superintendent, Presidency Correctional Home for information and taking necessary action.

To 07.10.2023 for production of the accused persons and and I.O's report.

I/O is directed to inform the defacto complainant on the date fixed.

D/c by me.

Sd/- Sudipta Bhattacharjee
Judge, Special Court &
2nd A.S.J., Alipore.

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