

Special S.T. No. 03(02)2024

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.

Order No. 01

Dt. 08-02-2024

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 physically before this Court.

The case record is taken up for passing order in respect of the bail petitions filed for the accused persons namely Sourav Chowdhury, Dipsekhar Dutta, Manotosh Ghosh, Asit Sardar, Md. Asif Afzal Ansari, Md. Arif, Satyabrata Roy, Sapatak Kamilya and Sumon Naskar as well as the petition under 227 of Cr.P.C. filed for the accused Ankan Sarkar.

Ld. Advocate for the accused Sumon Naskar submitted that the accused is in custody for a considerable period of time. There is no allegation of abatement against this accused and there is no prima facie materials against him. Only one phone has been seized from the custody of the accused. There is no chance of his absconsion and the accused will co-operate with the I.O., if he is enlarged on bail. Thus the ld. Advocate prayed for bail of the accused.

Ld. Advocate for the accused Asit Sardar submitted that the accused is innocent and is a student of B.A. and is in custody for long time. There is no involvement of the accused in the commission of the offence. The authority of the University is responsible for the act as because they had admitted a minor student and housed him in the hostel with the senior students.Thus the ld. Advocate prayed for bail of the accused.

Ld. Advocate for the accused Sapatak Kamilya submitted that this accused passed B.Tech and he is now a student of M.Tech and he is not a resident of the hostel of the University. Nothing was recovered from his possession. Among the statements of 67 witnesses, recorded under section 161 of Cr.P.C., only the

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statements of nine witnesses implicated this accused, but his involvement is doubtful. He submitted further that according to the statement of the witnesses, his only involvement is that this accused instructed Dipsekhar to write a letter to the authority to agitate that the minor victim boy was teased/ragged by someone and also pointed out that one witness stated the name of the accused persons except the present accused. The present accused has got no role to play. The statement of the father of the minor victim is nothing but a hearsay evidence. The accused was never in the hostel at any point of time. He was an ex-student . Thus he prayed for bail of the accused.

Ld. Advocate for the accused Monotosh Ghosh submitted that the accused is a student of second year and he was a guest of the accused Sourav Chowdhury and he has been falsely implicated in this case. Thus he prayed for bail of the accused.

While making submission as regards the bail prayer of the accused Dipsekhar Dutta, ld. Advocate submitted that this accused wrote a letter as per instruction of a senior student. He had no role to play in commission of the offence. Ld. Advocate for the accused Md. Asif Afzal Ansari submitted that the accused is innocent and he is ill and he also filed a prescription of doctor at the time of bail hearing. Thus he prayed for bail of the accused as his treatment is very much essential.

Ld. Advocate for the accused Sourav Chowdhury submitted that the accused is innocent and has been falsely implicated in this case and he has played a fatherly role with the minor victim and guided the victim. He is in custody for a long time. Thus he prayed for bail of the accused.

Ld. Special P.P. submitted that the police, after completion of investigation, submitted charge sheet against all the accused persons. It is a case of abatement of suicide of a minor student who had a bright future and it was not confined in ragging only but something more. He had prayed for custodial trial of the accused. Thus he opposed the prayer for bail.

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Perused the CD and other materials on record.

It appears from the case record that all the accused persons had played respective role in the commission of offence. The minor victim was found in naked condition with bleeding injury on his person including the vital part of his body. The charge sheet has already been submitted. Prima facie case has been made out against all the accused persons in the commission of the crime and the offence is very serious in nature. Some of the accused persons had passed out, but they remained in the hostel and rest of the accused persons were in the hostel at the relevant time. There is every possibility that they would influence the witnesses who are in the University including those who are staying in the hostel. Thus, at this stage without completion of evidence of witnesses the accused cannot be released on bail. Thus, the prayers for bail of all the accused persons are considered and rejected.

At this stage, the case record is taken up for passing order in respect of the discharge petition of the accused Ankan Sarkar under section 227 of Cr.P.C. Ld. Lawyer for the accused Ankan Sarkar by filing a petition submitted that on the basis of the written complaint, made by the father of the complainant, the instant case was started under section 302/34 of IPC read with section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000 against the present accused person and others. During the course of investigation, 12 accused persons who are the present student and ex-student of Jadavpur University were arrested from different places on different dates and on completion of investigation, charge sheet was filed under section 305/34 of I.P.C read with section 4 of West Bengal Prohibition of Ragging and Educational Institute Act, 2000 and section 10/12/17 of POCSO Act against the present accused and other 11 accused persons. According to him, this accused person has been entangled in false case just to harass him, even though he has no role to play in this connection. Ld. Advocate further contended that POCSO Act is very serious offence. Sections 10/12/17 of POCSO Act have been incorporated against the

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petitioner which has got no leg to stand. He added that it is at best a case of ragging. There is no mensrea to attract any of the sections under POCSO Act. He pointed out that according to section 2(4) of West Bengal Prohibition of Ragging in Educational Institute Act, 2000, ragging means that committing of any act which cause or like to cause any physical or pycychological or physiological harm or apprehention or shame or embarrassment to a student. According to him, section 4 of West Bengal Prohibition of Ragging in Educational Institution Act, 2000 contradicts sections 10/12/17 of POCSO Act. He also contended that any of the section of IPC has got no implication against the present accused person. According to him, at best section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000 can be attracted. He also pointed out that the head of the Institution was not implicated in the commission of the crime, though it is the duty of the Institution to safeguard their students. According to him, the story made by the complainant is inherently improbable and absurd and no man of ordinary prudent would act on the same. Even if the prosecution story is accepted, for argument sake, then also the placement of the fact singularly lacks either any of the ingredients of the offence alleged. The story narrated in the FIR suffers from contradictions and full of absurdity. He, by citing a decision of the Hon'ble Supreme Court (Gourab Jain Vs. Union of India), argued that the very object of POCSO Act is something different than that of ragging. He referred para 30, 32 of the said decision of Hon'ble Supreme Court.

As such, according to him, the accused has got no involvement in the POCSO Act and he also pointed out tht section 305 of IPC is not applicable against the present accused person. He contended that there must be an abatement under section 107 of IPC and their abatement is a direct one and mere spectator does not come within the definition of section 305 of IPC. He pointed out that abatement involved the mental process of instigating a person. It

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requires an active act or direct act which leads a deceased to commit suicide. But here in this case there is no direct or indirect involvement of the commission of the offence by the accused. He also argued that prosecution has failed to prove prima facie about involvement of the present accused in the commission of the offence. Thus, according to him, no charge can be framed against the accused. As such, he prayed for discharging the accused from this case.

On the contrary, Id. Special P.P., by filing a written objection has submitted that there are sufficient inculpatory materials on record to proceed the trial of the case and to frame charge against all the charge sheeted accused persons including the present accused. He categorically described as reflected from the charge sheet, how the victim was tortured by the accused Sourav Chowdhury and other persons including the present accused. He submitted that prior to the fateful incident, the victim was pressurized to shout out some objectionable sexual remarks to the resident of the hostel. During investigation, it also reveals that before the incident, the victim was compelled by the senior boarder of the hostel to prove that he was not a 'gay' and at the same time they did indescent behaviour and it transpires from the evidence of the witness that the victim was very frightened at that time. He pointed out that the victim was suffering from mental trauma at that time. The victim started running in complete naked state at the second floor of A2 Block of the hostel and entered into the room no. 62 and then he tried to close the door of the room from inside and then the other seniors pushed the door and pulled him out from the room and the victim boy started running through the corridor and finding no other alternative, he jumped from there and fell down. According to the evidence of the witnesses, the victim was tortured mentally and he was ragged. He cited several decisions of the Hon'ble Supreme Court and stated that at the time of consideration of charge, there is no scope of entering into the evidence and without taking evidence, the contentions of the

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accused person cannot be accepted. The accused tried to mislead the Court. The Court has already taken cognizance of the offence after considering the materials on record and the documents submitted therein. At the initial stage, even if there is strong suspicion against the prosecution case, there is ground to presume that the accused had committed suicide and there is no sufficient ground to release the accused from the charge. Thus, he opposed the prayer for discharge of the accused and prayed for framing of charge against the accused persons.

Heard both sides. Considered. Perused the CD and other materials on record.

Initially, the instant case was started under sections 302/34 of IPC and section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000 against the accused Sourav Chowdhury and others. During the course of investigation, 12 accused persons, who are present students and ex-students of Jadavpur University have been arraigned. Police started investigation. Subsequently SIT has been formed comprising the Officers of Homicide Squad, DD, Jadavpur under the supervision of DD, SSI, Kolkata. After completion of investigation, report in final form, that is charge sheet was submitted by the Investigating Agency under section 305/34 I.P.C read with section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000 and sections 10/12/17 of POCSO Act against all the twelve accused persons. During investigation, it is revealed that the victim was a student of first year BA Hons. of Jadavpur University. He joined his class on 07-08-2023 and started staying at main hostel A2 block in room no. 68 of second floor as guest boarder from 06-08-2023. On the fateful day that is on 09-08-2023, when the victim returned from Jadavpur University at evening, some senior and other boarders took him to take tea and then he returned back to the hostel. The senior students of the hostel also talked with his parents and assured that there is nothing to be worried about the victim's staying in the hostel and they all were taking care of him. During investigation, it is revealed that before the incident, he was compelled by some senior boarders including

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the present accused to prove that he is not gay by striping himself. During that period, he had conversation with his mother and brother over phone and he was talking with them excitedly and he was very much frightened at that time. The victim told his brother that he was pressurised to undress himself by the senior students. It is further stated that he was suffering from mental truama due to the pressure. Thereafter, the victim started running in completely naked state at the second floor in the room no. 65 when he tried to close the door of the room no. 65 from inside, Md. Arif and other senior students pushed the door and pulled him out from the room. Thereafter, the victim boy started running along with the corridoor and finding no other way of escape as the senior students of the hostel were present in both the upper and lower stair cases blocking all the escaping route for the victim, he jumped up from the floor and fell down on the ground. During the course of investigation, the investigating Officer found one letter written addressing to the DIN of Jadavpur University and the same was signed by the victim boy. It is revealed that the said letter was written by one boarder of the main hostel namely Dipsekhar Dutta in presence of other boarders of the said hostel in the evening of the fateful night and the said letter was written by him on the instruction of one passed out boarder namely Sourav Chowdhury and the others and after completion of writing of the said letter, said Dipsekhar Dutta also ordered the minor victim boy to put his signature at the end of the letter in the diary. Though, initially the minor victim boy was not willing to put his signature in the letter but some boarders made some remarks that whether he was a gay or Eunuch and hearing such remark, the minor victim boy was abashed and he was compelled to put his signature there. It is revealed that the accused Dipsekhar Dutta and others tried to implicate that there was not an incident upon the fresher in the hostel campus, rather, it was falsely alleged by the campus students against the senior boarders. From the statements, recorded under section 164 of Cr.P.C., it reveals that

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Sourav Chowdhury including the present accused made comments to the victim boy and created pressure upon him to unrobe himself and the victim boy was so puzzled that he requested his mother to take him back as he was so frightened and ultimately when he was not getting any escape route due to the blockage of the stair case by the present accused, he jumped from the floor and fell down and ultimately succumbed to the injuries. From the investigation, it reveals that this accused is involved in the commission of the said offence of abetting for committing suicide. The contentions, as raised by the defence that POCSO Act has no application in the present case as because he was also involved in sexual assault on the victim and made a child to strip and parade naked in front of them. Due to such continuous mental stress and torture, the victim became shattered. There is no conflict between ragging under West Bengal Prohibition of Ragging in Educational Institute Act, 2000 and Pocso Act and both acts have distinct and separate identity . West Bengal Prohibition of Ragging in Educational Institute Act, 2000 cannot overlap. Here the case in hand is not confined within ragging as defined in the Act but something more. The accused persons at their own peril took the law in their hand. Prima facie, there is a strong evidence against the present accused persons. It is revealed that the victim was subjected to mental torture. He was ragged and subjected to aggravated sexual assault and harassment by the accused including the present accused conjointly inside the hostel on the fateful night. When the Victim boy was completely shattered and broke down mentally and at that time all the escaping route was blocked by senior boarders and finding no other alternative, the victim boy was compelled to commit suicide on 09-08-2023 by jumping from the Veranda of the said hostel to save himself from severe atrocities, made by the senior students of the hostel including the present accused person. In State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, the Hon'ble Supreme Court was pleased to observe that - “ it is trite that at the stage of consideration of an application for

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discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage”

In Sheoraj Singh Ahlawat V. State of U.P. [(2013) 1] SCC 476, the Hon’ble Supreme Court observed that - “... What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage even **strong suspicion** founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

In the State of Gujrat vs. Dilipsinh Kishorsing Rao, Criminal Appeal No. 2504 of 2023, the Hon’ble Supreme Court observed that - “..... It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to

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determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material.

The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

In State of Maharashtra vs. Som Nath Thapa (1996) 4 SCC 659 And State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338, the Hon'ble Supreme Court observed that - "..... The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case."

It is further held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

Here in this case, prima facie case has been established against the present accused together for the trial and I am of the opinion that there is ground of presuming that the accused persons including the present accused have committed offence triable

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section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000 and section 10/12 read with section of POCSO Act and under sections 305/34 of Indian Penal Code,. The petition, filed under section 227 of Cr.P.C., filed by the present accused person, is devoid of merit. Considering all the facts and circumstances and the discussions made above and keeping in view the settled principle of law, I am not inclined to discharge the accused person. Hence, the petition filed under section 227 of Cr.P.C. is rejected on contest but without cost.

The Superintendent, Presidency Correctional Home is directed to arrange for medical treatment of the accused persons namely Md. Asif Afzal Ansari and Asit Sardar.

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

The case is ready for framing of charge.

At this stage the case record is taken up for framing of charge.

Learned Special P.P-in-charge is present.

Learned Defence Counsels are also present.

I.O. is also present.

Ld. Special P.P. submitted a document along with a petition showing that the Officer-in-charge, Homicide Squad, Detective Department, Kolkata Police sent a message to the Officer-in-charge, Haskhali Police Station, Nadia, West Bengal informing the defacto complainant to attend the Court today as the day is fixed for consideration of charge against the accused persons and hearing of the bail application. Compliance report has been submitted to the effect that the matter was informed to the defacto complainant.

Let it be kept with the record.

Learned Special P.P-in-charge opened the case by describing the charges to be framed against the accused persons.

Heard both sides.

Perused the materials on record and C.D.

The court has discussed in detail while rejecting the prayer under

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227 of Cr.P.C. for discharging the accused. On perusal of the same and considering all these this court is of the opinion that there is sufficient ground for presuming that all the accused persons had committed the offence under section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000, section 10/12 read with section 17 of the POCSO Act and section 305/34 of Indian Penal Code, and Accordingly, the charge is framed against all the accused persons under section 4 of West Bengal Prohibition of Ragging in Educational Institute Act, 2000, section 10/12 read with section 17 of the POCSO Act and section 305/34 of Indian Penal Code, on separate sheet of paper and the same is kept with the case record.

The contents of the charge is read over and explained to the accused persons in a vernacular language to which they pleaded not guilty by saying “Amra Nirdosh” and claimed to be tried.

Fix **11.03.2024** & **12.03.2024** for production of accused persons through VCS and evidence of CSW 1.

I.O is directed to bring the witness that is the CSW-1 on the date fixed positively.

D/c by me.
Sd/-

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

Sd/-

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

