

**S.C.34(08)2025 CIS 139 of 2025**  
**J.O Code :- WB01070**

Order no.02 dated 22-01-2026

Today is fixed for opening case by the prosecution and consideration of charge.

The sole accused is present with his Ld advocate.

Ld PP in-charge is present.

Ld advocate for the accused has filed a petition seeking discharge.

Heard Ld advocate for the accused and Ld PP in-charge over such prayer seeking discharge.

Considered the submission and the materials in record and in the CD.

Before entering into the merits of the petition I find it proper to reiterate the circumstances leading to preference of the petition under consideration.

The defacto complainant made a complaint at Maheshtala PS stating that for about six years she had a love relation with the accused and such accused during such period had promised to marry her and had sexual relation with her. It is also alleged that the defacto complainant and the accused used to reside as husband and wife. It is also alleged that due to such sexual relations, she became pregnant and when she pleaded with the accused to marry her the accused sought time on various pretext. The defacto complainant gave birth to a son on 17-07-2022 and since thereafter the accused had been threatening the defacto complainant/victim.

The first ground set forth by the accused is that the victim did not render any statement and also denied to give sample of blood for DNA profiling. As regards the refusal of the defacto complainant to render a statement, it does not give rise to any adverse presumption against her. It must be taken into consideration that the victim is a woman who is not acquainted with the investigation and court procedures and it might be that due to her unresolved apprehension, she had refused to render a statement. Further more, her refusal to give sample blood cannot have any effect on the point of consideration of charge. The sample blood was required only to resolve the question of paternity and therefore the refusal of such cannot render any sort of fatal blow to the prosecution.

The second ground set forth by the accused is that the medical officer who had examined the victim has not been enlisted as a charge sheet witness. Such cannot be a ground seeking discharge. If the IO has omitted to enlist any relevant witness in the charge sheet, the court is empowered to seek attendance of such witness. Hence, such a ground is also not a cogent ground.

The third ground set forth by the accused is that the defacto complainant being the victim had filed an affidavit before the Ld ACJM Alipore and wherein she has stated that she does not desire to proceed with the case. Such an affidavit has absolutely no bearing on the point of charge. The affidavit does not have any iota of weight-age under law. Even if such an affidavit is taken into consideration it would appear that the defacto complainant has nowhere stated that she had made the allegation over misunderstanding. The defacto complainant has simply stated that the disputes had been settled. Therefore, such an affidavit does not bring forth any cogent ground to discharge the accused.

The fourth ground set forth by the accused is an observation passed by the Ld ACJM at Alipore. Ld advocate for the accused submitted vide order dated 18-10-2024 the Ld ACJM Alipore was pleased to grant bail to the accused and had opined that "but the contention made in the written complaint is ambiguous and does not come in conformity to that of rape". I have perused the order. This court refrains from entering into the question as to whether the Ld ACJM Alipore was within the jurisdiction to opine on the merit of the case and also whether the affidavit could be taken into consideration while determining the prayer for bail. Notwithstanding such, the opinion of the Ld ACJM Alipore is, with all respect, not binding upon this court. Therefore, none of the grounds taken up by the accused is cogent enough to allow the prayer for discharge. I find it pertinent to also mention that it was never asserted by the Ld advocate for the accused that the allegation were absolutely false or that the materials collected did not justify the framing of a charge.

It might be argued that where the victim has herself stated that she and the accused had love relation and thereafter had sexual intercourse is a ground enough to discharge the accused. It must be taken into consideration that even though the victim had stated that there was a love relationship, only such is not a ground enough to discharge the accused. A question lingers as to whether the accused had induced the victim to enter into a so called love relation only with the intent to satisfy his lust. The Hon'ble Supreme Court of India in the case of Pradeep Kumar Kesarwani V the state of UP and another and cited in 2025 LiveLaw (SC) 880 was pleased to hold that "there is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had malafided motives and had made a false promise to this effect only to satisfy his lust, as the later false in the ambit of cheating or deception". In the instant case at this stage there is nothing which can allow this court to reach the conclusion that the accused had actually wanted to marry the victim. The Hon'ble Supreme Court of India in the case of Dipakbhai Jagdishchandra Patel V Stae of Gujrat and another (Criminal Appeal no.714 of 2019) was pleased to hold that "however, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notion of the judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence". I have perused the statement as recorded. It must also be determined as to whether she was under any sort of coercion which compelled her to swear the affidavit. Therefore on all the above consideration it is hereby,

Ordered

That the prayer seeking discharge stands refused.

To 11-03-2026 for opening case by the prosecution and consideration of charge.

D/C by me.