

Special Trial No. 05 (09) of 2023
(CIS- 05/2023)

Present: Sri Anirban Das (WB00691)
1st Addl. Sessions Judge, Sealdah

Order No. 30 Dated: 28.04.2025

The accused Sadia Aziz and Noain Ghani, Suja Nuser Ghani and Sadia Afsa are produced from JC through VC.

The accused Amina Parveen, who is on bail, is present.

Ld. Advocates for all the accused persons are present.

Ld. Special PP is present

The Ld. JM, 3rd Court, Sealdah Sweta Srivastava appears as witness.

She is examined in chief in full as PW-6. She proved the statement of the victim recorded on 11.01.2023 and 06.02.2023 which were already marked as Exbt. P-1(1) and P-2(1) respectively.

She also proved the order sheets of Ld. ACJM, Sealdah dated 11.01.2023 as Exbt. P-5(6).

The Ld. Advocate for the accused Suja Nuser Ghani started to cross examine the witness.

At the time of cross examination, the Ld. JM was asked the following question:-

“Whether you had any memory loss on 06.02.2023”

As this question attacked the dignity of a Judicial officer, this court oppose to record it but the Ld. Counsel repeatedly pressed to allow his question.

On repeated request from this court the Ld. Counsel did not change his stand and by filing a petition prayed for allowing the said question.

It is fact that PW-6 turned up before this court as the Judicial Magistrate who had recorded the statements of the victim U/s 164 Cr.P.C and the same was done in her official capacity.

The question mentioned above, is no doubt a question of such nature which attacks the dignity of a witness, who is a Judicial officer.

Being the court I should not allow the Ld. Counsel to put the said question to a member of West Bengal Judicial Service and who is acting as the Judicial Magistrate.

The question is not doubt derogatory and was not at all expected from a senior court officer (Ld. Counsel for the accused Suja Nuser Ghani).

It is fact that the two statements of the same victim were recorded by the same Ld. JM on two different dates but that does

not mean that such a derogatory question can be asked to the Ld. JM.

It is needless to mention that the Ld. JM complied the direction of her superior officer and had recorded the statements in compliance with the direction of Ld. ACJM, Sealdah and of this court and obviously, she had done it in her official capacity.

On the basis of my said discussion, I am of the view that allowing the Ld. Counsel to go forward with the said question will attack the dignity of the judiciary and as such, I am not inclined to allow the Ld. Counsel to put the specific question "*Whether you had any memory loss on 06.02.2023*" and the prayer stands rejected.

On 25.04.2025 a petition was filed for the accused Sadia Aziz with a prayer to release the said accused on bail and the said petition is taken up for hearing today.

Heard Ld. Counsel for the said accused and the Ld. Special PP.

The Ld. Counsel for the accused placed before me several decisions of Hon'ble High Court Calcutta and the Hon'ble Apex Court as reported in 2017 SCC Online, Cal 417 and (2024) 8 SCR 633.

It was the submission of the Ld. Counsel for the said accused that bail is the general rule and jail is an exception.

Ld. Special PP raised strong objection and attracted my attention to the decision of the Hon'ble High Court, Calcutta dated 04.10.2024 in CRM (DB) 2906 of 2024.

It appears that in the said matter the prayer for bail of this accused was rejected by the Hon'ble Court.

I have considered the evidences already recorded in this case.

It is fact that this case relates to trafficking of minor children and it appears that this accused was the part of the said net.

Accordingly, I do not find any new ground to allow the bail prayer for the said accused and the same stands rejected.

By filing another petition for the accused Sadia Aziz, a prayer was made to alter the charge for the said accused on the ground that the victim was not a minor and as such, no charge under POCSO Act can be considered in this case.

In support of the contention the decision of the Hon'ble Apex Court as reported in 2013 SCC Online SC 507, (2009) 6 SCC 681, 2008 (15) SCC 223 were placed.

I have perused the said decision.

In this case several witnesses were examined including the doctor.

I did not find any challenging question which can lead me to hold that the victim was not a '*child*' at the time of incident as per POCSO Act and accordingly, charge was framed under POCSO Act against the said accused.

It is fact that as per provision of section 216 Cr.PC charge can be altered or added at any time before pronouncement of the judgment and this discretion is lying on the court.

During trial, I did not find any such materials which can lead me to apply the provision of section 216 Cr.PC and accordingly, I think that the petition filed by the Ld. Advocate for the accused Sadia Aziz has no base at all and the same stands rejected.

Fix **05.05.2025** for further cross examination of the PW-6, Smt. Sweta Srivastava, Ld. JM, 3rd Court, Sealdah.

Let a copy of this order sheet be sent to the Ld. JM, 3rd Court, Sealdah with request to turn up before this court as witness to face the cross examination from the accused persons.

Dictd & Corttd by me

1st A.S.J., Sealdah

(Anirban Das) WB0691
Addl. Sessions Judge,
1st Court, Sealdah