

In the 1st Court of Addl. Sessions Judge and Special Court under POCSO Act.

Special Case No. 36 of 2022 (R-37 of 2022)
(CNR No.WBSP070022822022)

**Present: Sri Bibhas Chatterjee (J.O. No.WB00702),
Additional Sessions Judge, 2nd Court, Sealdah
and 1st A.S.J. Court-in-charge & Special Court
under POCSO Act, Sealdah**

Order No.12 dated 04.01.2023

Today is fixed for production of the accused person named Sk. Shahid and framing of charge if any and ER of WA of accused Shahin.

The accused person above named is produced from JC.

No ER of WA is received in respect of accused Shahin.

One intimation has been received from the OC, Beniapukur PS wherein he prayed for time for execution of the same.

The prayer is considered and allowed for ends of justice.

One bail petition has been filed by the Id. Advocate on behalf of the above named petitioner/accused praying for releasing him on bail on the ground as stated therein.

Bail petition is taken up for hearing.

Heard Ld. Special PP. Heard Ld. Advocate for the accused.

Ld. Advocate for the accused submits before this court the accused has been falsely implicated in this case and he was behind the bar for a prolonged period i.e, from 15.08.2022. Ld. Advocate also submits that in the instant case charge sheet has been filed by the investigating agency long back and till this day the accused is languishing in judicial custody and prays for releasing him on bail by imposing any condition upon him only considering of his prolonged detention.

Ld. Special P.P raises strong objection against the instant bail prayer and submits in the instant case the charge sheet has been submitted by the investigating agency after completion of investigation. But another accused is still in absconsion. He again submits that in this case, the victim and the other vital witness of this case have yet to be examined and if the accused is released on bail, the prosecution case will be prejudiced and accordingly he prays for rejection of the bail prayer.

Considering the rival submissions of both sides and on perusal of the case diary along with the materials on record, it reveals that this court was pleased to reject successive bail prayers of the accused since 16.08.2022 and finally on 15.12.2022 this court was again pleased to pass a detail order by rejecting the bail prayer of the above named accused person and the operative portion of the order is as follows:-

“Considering the rival submissions of both sides and on perusal of the case diary along with the materials on record, it reveals that the instant case has been culminated in filing of the charge sheet against the accused persons vide charge sheet no. 273 of 2022

dated 27.09.2022 U/s 324/326/363/376(3)/114 IPC read with section 6 of POCSO Act.

We know that filing of charge sheet is a substantive development in course of investigation in changed circumstances. Not only that when the charge sheet has been filed against the accused person there is prima facie case established against him. Not only that I would like to mention that charge has yet to be framed against the accused person and releasing of the accused from the custody at this juncture where the prosecution has not even commenced to examine the main witnesses of this case including victim, it would prove the detrimental of the eventual outcome of the trial. It also requires mentioning that it is also the settled law that the detention of the accused behind the bar for a prolonged period can not be the sole criteria for releasing the accused on bail when heinous offence has been labelled against him.

In view of the above circumstances, bail petition stands rejected.”

We know that in catena of decisions, the Hon'ble Apex Court opined that repeated bail applications without any changed circumstances would lead to a bad precedent (2006) Vol.1 ALCLR OC 264 and the same principle has been reiterated by the Hon'ble Apex Court in (Liaqat Hussain and Others versus Union Territory of J&K (25th August, 2020), Sukit Singh Bewa and others versus State of Punjab (December, 2021).

In view of the above circumstances and keeping in mind the decisions of the Hon'ble Apex Court, this court is not in a position to entertain the bail prayer of the accused without any changed circumstances. Hence, bail petition stands rejected.

C.D. be returned.

To **16.01.2023** for production of the accused person and framing of charge and ER of WA of accused Shahin.

D/c by me

2nd Addl. Sessions Judge and
1st A.S.J. Court-in-charge

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1st A.S.J. Court-in-charge.
Sealdah