

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s).8058/2024

(Arising out of impugned final judgment and order dated 12-05-2023 in CRM(A) No. 1968/2023 passed by the High Court at Calcutta)

UTPAL MANDAL @ UTPAL MONDAL

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL &amp; ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.77123/2024-CONDONATION OF DELAY IN FILING and IA No.77124/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.77125/2024-EXEMPTION FROM FILING O.T. and IA No.77122/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 04-04-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Petitioner(s) Mr. Arvind Gupta, AOR  
Mr. Anil Kumar Sahu, Adv.  
Mr. Mohit Bidhuri, Adv.  
Mrs. Suman Sharma, Adv.  
Mr. Kanav Bhardwaj, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

This is an application seeking anticipatory bail filed on behalf of the accused petitioner who is arraigned an accused in F.I.R. No.708 dated 03.11.2022. Having considered the submissions advanced by learned counsel for the petitioner and after going through the material available on record, we are of the view that the petitioner does not deserve indulgence of anticipatory bail. However, before closing the matter, we must observe that the

mandatory requirements of Section 33(7) of the POCSO Act and Section 228A of the I.P.C. have not been followed in this case inasmuch as while recording statements of the victim under Sections 164 and 161 of the Cr.P.C., her name is mentioned, and has not been masked as per law laid down in Nipun Saxena v. Union of India reported in (2019) 2 SCC 703. The relevant extracts of which are quoted hereinbelow: -

"11. Neither IPC nor CrPC define the phrase "identity of any person". Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law-makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

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34. ....A bare reading of Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during the course of investigation or trial and the identity of the child is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of Pocso is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the interest of the child and not otherwise. One such case where disclosure of the identity of the child may be necessary can be where a child is found who has been subjected to a sexual offence and the identity of the child cannot be established even by the investigating team. In such a case, the investigating officer or the Special Court may allow the photograph of the child to be published to establish the identity. It is absolutely clear that the disclosure of the identity can be permitted by the Special Court only when the same is in the interest of the child and in no other circumstances. We are of the view that the disclosure of the name of the child to

make the child a symbol of protest cannot normally be treated to be in the interest of the child.”

We therefore feel that an exercise of sensitization of judicial officers as well as the police Officers is required to be undertaken in the State of West Bengal so as to ensure strict compliance of this mandatory requirement.

A copy of this Order shall be forward to the Registrar General of the High Court of Calcutta for being placed before the Hon'ble Chief Justice.

The Special Leave Petition(s) stand dismissed as above.

Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)  
COURT MASTER (SH)

(POOJA SHARMA)  
COURT MASTER (NSH)