

# Arjun Sarkar & Anr vs State Of Tripura And Ors on 20 March, 2018

**Author: S. Talapatra**

**Bench: S. Talapatra**

Page 1 of 6

HIGH COURT OF TRIPURA  
AGARTALA  
Crl. Petn. 56/2017

Arjun Sarkar & anr.

----Petitioner(s)

Versus

State of Tripura and ors.

----Respondent(s)

For Petitioner(s) : Mr. DC Roy, Advocate

For Respondent(s) : Mr. D. Bhattacharjee, Advocate

HON'BLE MR. JUSTICE S. TALAPATRA

Order

20/03/2018

Heard Mr. DC Roy, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned counsel appearing for the respondent no. 3. None appears for the State-respondent when the matter is taken up for hearing.

The brief fact which led to the filing of this petition under Section 482 of the Cr.P.C is noted at the outset. On 06.09.2017, the petitioner no. 2 was reading in Belonia Mirzapur school in the 9th standard. On that day of occurrence, she was proceeding towards school and on the way to school, she was intervened and abducted by the respondent no.3 with the help of some other miscreants. Further allegation against the respondent no. 3 is that he with the aid of few other miscreants had abducted the petitioner no. 2 and coerced the petitioner no. 2 to undergo marriage in a mandir. The respondent no. 2 had also caused sexual violence on the petitioner no.2. The father of the petitioner no. 2 namely Sri Arjun Sarkar informed the police that the respondent no.3 had forcefully kidnapped the petitioner no.2 being aided by 4/5 other persons. Based on the said complaint, Belonia Women PS case no. 2017 WMN 042 under Section 363/34 of the IPC was registered for investigation.

The petitioners have urged this court to quash the order dated 11.09.2017 and 22.09.2017 whereby the respondent no. 3 was granted ad-interim bail. It has been further urged that the Judicial Magistrate, Belonia, South Tripura be directed to add toward charging under the „relevant provisions of the Protection of Child from Sexual Offence Act, 2012 (for short POCSO) in Belonia Women PS case no. 2017 WMN 042. It has been further submitted that the statement of the petitioner no.2 under Section 164(5) Cr.P.C be recorded and for that purpose a due environment should be created.

Mr. DC Roy, learned counsel appearing for the petitioner has submitted that a bare reading of the FIR would lead us to hold that the registration was improper and the registration ought to have been under Section 366 of the IPC and under section 4 of the POCSO Act, but in lieu of those charging provisions, it has been registered under Section 363/34 of the IPC. Mr. Roy, learned counsel has orally submitted that seeking quashing of the orders dated 11.09.2017 and 22.09.2017, the petitioner has prayed in effect for cancellation of the bail that has been extended to the respondent no.3, represented by Mr. D. Bhattacharjee, learned counsel.

Mr. D. Bhattacharjee, learned counsel appearing for the respondent no. 3 has made a specific submission which has not been confronted by Mr. Roy, learned counsel for the petitioner that after completion of the investigation, the charge sheet [the final report] has already been filed and the trial is awaited. Mr. Bhattacharjee, learned counsel has submitted that there is no allegation in the entire petition that the petitioner had ever violated the conditions of bail.

In the order dated 11.09.2017 passed by the Judicial Magistrate (Annexure 2 to the petition) it has been observed that the interim bail has been granted to the respondent no.3. While granting the bail, the Magistrate came to a tentative observation that no force was applied on the victim and the victim voluntarily left with the accused-petitioner following a love affair. While granting the interim bail, according to Mr. Roy, learned counsel the concerned court of the Judicial Magistrate did not consider the very relevant fact that the victim is below the age of majority.

Having appreciated the submissions made by the learned counsel, the pertinent question that arises for determination by this court is whether this court should interfere with the order dated 11.09.2017 and 22.09.2017 whereby the respondent no.3 was granted interim bail or not;

Provisions of Section 439(2) of the Cr.P.C while encompassing the issue of cancellation of bail have taken care of various aspects. On flimsy ground, the privilege of bail cannot be recalled or cancelled. Only when the specific case of violating the conditions of bail or misuse of the privilege is established before the appropriate court (the court of Sessions or the High court), the issue of cancellation of bail would be considered within the parameters as laid down under Section 439(2) which reads as under:

"The High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody ".

But with the passage of time, the law has developed and opened up new dimension. The object underlying the cancellation of bail is to protect the fair trial and secure justice to be done to the society or preventing the accused who is at large by the order of bail from tempering with the evidence, but the court cannot cancel the bail except on the ground as mentioned in section 437 of the Cr.P.C. If there is a „reasonable apprehension that the accused person by abusing the privilege of bail has been tempering with the evidence or trying to allure the witnesses in unlawful manner then that can provide the reasonable ground for cancellation of bail and for that purpose the notice should be issued against the accused person.

Mr. Bhattacharjee, learned counsel has referred to Dolat Ram and others vs. State of Haryana reported in (1995) 1 SCC 349 in respect of the parameters those required to be considered by the competent court for cancellation of bail. In Dalot Ram (supra) the apex court has observed as under:

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial".

This principle cannot be lost sight of while considering the prayer for bail.

Mr. Roy, learned counsel has not referred any passage from this petition to show that the parameters as laid down by the apex court has been satisfied. From a reading of the entire petition, it will be apparent that the basic grievance is that the victim before attaining the majority was allegedly kidnapped by the respondent no.3 and a statement under Section 164(5) of the Cr.P.C of the victim has been recorded. If the content of the statement made under Section 164(5) of the Cr.P.C is taken into consideration, Mr. Roy, learned counsel has stoutly submitted that the respondent no.3 shall be charged under Section 366 of the IPC and Section 4 of the POCSO Act, but the charge sheet [the final report] has been filed under Section 363 of the IPC which is comparatively a minor offence and the punishment is less. As such, Mr. Roy, learned counsel has contended that the appropriate court be directed to add section 366 of the IPC and section 4 of the POCSO Act as the charge sheet has been filed by the investigating officer in its final form under Section 173(2) of the Cr.P.C.

Having appreciated the submissions made by the learned counsel appearing for the parties, this court is of the view that this petition is entirely misconstrued and hence it must be dismissed.

Accordingly, it is dismissed. Before parting with the records, if there are materials to frame charge under Section 366 of the IPC and under Section 4 of the POCSO Act, the victim or the public prosecutor may urge to the trial judge to frame charge under Section 366 of the IPC and under section 4 of the POCSO Act and there is no legal bar that the Magistrate cannot frame such charge against the accused person.

Thus, this order shall not create any impediment for the trial judge to frame charge under Section 366 of the IPC and section 4 of the POCSO Act against the respondent no.3 if the materials are available in the police report as supplied to the accused person under section 207 of the Cr.P.C.

JUDGE Saikat