

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ORDER XXII RULE 3(2)

SPECIAL LEAVE PETITION (CRL.) No. OF 2015

[Arising out of the final Judgment and Order dated 17-06-2015
passed by the High Court of at Calcutta in CRR No. 1285/2015]

IN THE MATTER OF:-

Position of Parties

	IN	IN	IN
	TRIAL COURT	HIGH COURT	THIS COURT
SUJAY MITRA ALIAS SUJOY MITRA SON OF TARUN KUMAR MITRA RESIDING AT 138 S P MUKHARJEE ROAD, KOLKATA-700 026	Accused	Petitioner	Petitioner
VERSUS			
STATE OF WEST BENGAL Through HOME SECRETARY, SECRETARIAT AT KOLKATA	Prosecution	Respondent	Respondent

SPECIAL LEAVE PETITION FILED UNDER ARTICLE 136 OF
THE CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India
And His companion Justices of the
Supreme Court of India

The Humble petition of
The petitioner above named

MOST RESPECTFULLY SHEWETH:-

1. That this Special Leave Petition is being filed challenging
the final impugned Judgment and Order dated 17-06-2015

passed by the High Court at Calcutta in CRR No. 1285/2015, whereby the High Court dismissed the CRR petition filed by petitioner herein.

2. **QUESTIONS OF LAW**

The following substantial questions of law arise in this Special Leave Petition for the kind consideration of this Hon'ble Court:

- (i) Whether a prime witness who is a foreign national can be examined through video conference in a criminal trial, when there is no extradition treaty between India and his/her country?
- (ii) Whether the courts below are justified in permitting the prosecution to examine an Irish national through video conferencing and rely upon her statements made on foreign soil and recorded by the trial court through video conference, particularly when there is no extradition treaty between India and Ireland and there is no provision to prosecute her in India in case of perjury or contempt of court found out on her part?
- (iii) Whether a prime witness in a criminal trial such as prosecutrix in a rape case can be permitted to be examined through video conferencing without there being any legal procedure to be followed by the trial court and prosecution during such examination?
- (iv) Whether the High Court is justified in allowing trial court to act upon the evidence of a foreign national that was recorded through video conferencing without complying with the mandates of this Hon'ble Court delivered in **State**

of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC**601?**

- (v) Whether the High Court is justified in disallowing the petitioner for agitating against the flawed evidence recording through video conferencing holding that he had not challenged the initial order of trial court, whereby the application for on-line examination of witness was allowed?
- (vi) Whether the Ld. Trial Court failed in its duty to issue summons as provided in Chapter VI of CrPC, where the copy of the summons to be served by registered post addressed to the witness at the place where she ordinarily resides or carries on business or personally works for gain?
- (vii) Whether the Ld. Trial Court failed to appreciate that the application filed by the prosecution at the behest of Embassy of Ireland is unknown to criminal procedures according to the municipal laws of India on the ground that it would be time consuming to send summon upon the victim?
- (viii) Whether the Ld. Trial Court failed to appreciate that this court in the case of State of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC 601 was dealing in a case where the video conferencing was supposed to take place in a studio of VSNL and this court expected such a set up of a video conferencing equipment and technology in the Court in recording of evidence in criminal trial?

- (ix) Whether the Ld. Trial Court violated the mandate of this Hon'ble Court by not affording an opportunity to avail the facility of play back of the so called video conferencing to the Petitioner?
- (x) Whether the Ld. Trial Court went wrong in appreciating a webcam based Skype chat to be video conferencing when video conferencing required distinct technology platforms of a video conferencing as provided in VSNL studios?
- (xi) Whether the Ld. Trial Court ought to have passed a speaking order regarding the Video Conference facility available in the court as the Petitioner had raised objections that there is no prevailing or existing arrangement to record evidence of a particular witness through video conference?
- (xii) Whether the Ld. Trial Court failed in affording an opportunity to the petitioner or the counsel to verify /reply to the report filed by the prosecution regarding the arrangements of recording evidence on video conference when specific apprehensions were raised by the petitioner?
- (xiii) Whether the Ld. Trial Court went wrong in appreciating the technology required and ordered for evidence by way of videography by its order dated 24.11.2014?
- (xiv) Whether the Ld. Trial Court was empowered under law to dispense with summon and ask prosecution to serve a

notice through email to the witness to attend a video conference arranged by the prosecution?

(xv) Whether the Ld. Trial Court went wrong in administering oath to the witness who was sitting in her own private room at the time of video conference on 06.01.2015 in conducting a trial in a case of this magnitude?

(xvi) Whether the court below was right in outsourcing the installation, operation, maintenance of the instrument for video conferencing to the prosecution when it ought to have arranged an infrastructure in the direct supervision of the court?

(xvii) Whether the Hon'ble High Court ordering the Ld. Trial Court to send the documents to be proved by the witness to be sent to the witness in advance failed to order on the status of material exhibits like the clothing etc which need to be proved?

3. DECLARATION INTERMS OF RULE 4 (2)

The petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned judgment and order.

4. DECLARATION IN TERMS OF RULE 6

The Annexure P1 to P produced along with the S.L.P are true copies of the pleadings /documents which formed part of the records of the case in the court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

The leave to appeal is prayed on the following among other grounds:

- A. That the present petition carries a substantial question of law as to whether a prime witness of foreign national can be examined through video conference in a criminal trial, when there is no extradition treaty between India and his/her country. This Hon'ble Court has held in **State of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC 601** that evidence by video conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable.
- B. That apart from absence of extradition treaty there are other serious lapses in the evidence recording by way of video conference in the case in hand such as non-use of CIS application, non-filing of affidavit of identity by the witness etc. Hence the case deserves interference of this Hon'ble Court under its constitutional jurisdiction of Articles 136, 141 and 142 of the Constitution of India. Further detailed guidelines having binding force of a law need to be laid down by this Hon'ble Court in this regard considering larger public interest.
- C. That evidence recording of the prosecutrix is not according to the 'procedure established by law' and there

is blatant violation of guidelines laid down by this Hon'ble Court in **State of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC 601**. The entire trial is vitiated and still in progress violating the constitutional rights of this petitioner. Under this circumstance petitioner was compelled to approach the High Court under its extraordinary jurisdiction of section 482 of Cr. PC seeking to quash or discard the entire evidence of foreign witness recorded in violation of settled legal principles. However, the High Court dismissed petitioner's case for the simple reason that he had not challenged the order of trial court whereby the witness examination through video conference was allowed.

D. That jurisdiction of High Court U/s 482 Cr.PC is wide enough to quash the entire evidence of witness which has been recorded in violation of the law. High Court holds inherent power under the Code to pass any order as may be necessary to give effect to the provisions of Code or otherwise to secure the ends of justice. Here in the case in hand the petitioner moved High Court not challenging any particular order of the trial court but seeking its interference to ensure a fair trial. But the High Court proceeded with the petition as it is a simple appeal or revision against order dated 18-2-2015 of trial court.

E. The major shortcomings in the process of evidence recording through video conference are as follows:

- (i) There is no extradition treaty between India and Ireland
- (ii) Summons for appearance in the trial court has never been served on the foreign witness;
- (iii) Neither the prosecution nor the witness herself has filed affidavit of identity before the commencement of evidence recording;
- (iv) The trial judge has neither verified the competency of equipments arranged by the prosecution for video conference nor recorded his satisfaction on it in a speaking order; The Ld. Trial Court on 24.11.2014 passes a cryptic order which reads as “Accused is produced from JC. Report filed by the prosecution regarding the arrangement and I find it is satisfactory to 15.12.2014 for evidence of victim by way of videography. Prosecution is directed to make all arrangement prior to 15.12.2014 and also inform the victim without any delay.”
- (v) No CIS application had been used but the entire video conference was through only Skype
- (vi) The trial judge is not at all recording the demeanor of the witness being examined and she is not even looking at the camera while being examined through video conference.

- (vii) No recording of the webcam conference is given to the petitioner till date even though this court in the case of Dr. Praful B. Desai (supra) had heavily relied on play back facility which is for the added advantage of the accused.
- (viii) The webcam connectivity was inconsistent as there were breaks and streaming delays which resulted in interruptions to the recording of the evidence.
- (ix) The web cam was focused only on the person and not the surroundings and could not ascertain the room was free from any third person.
- (x) The witness was administered oath in India on the webcam and the depositions are sending to her later by prosecution for her signatures.
- (xi) The prosecution had exhibited materials, documents, clothes etc. on webcam which could not capture images in satisfactory quality to identify and prove such exhibits by the witness.

It is the respectful submission of petitioner that the above listed shortcomings are clearly violative of mandates of this Hon'ble Court. If the trial court is allowed to rely upon such erroneously recorded evidence it may go highly prejudicial to this petition. Hence the High Court ought to have quashed the entire evidence of foreign witness.

F. That the High Court dismissed the petitioner's case holding that he has not challenged the order dated 17-

9-2014 of the trial court whereby the court allowed the evidence recording by way of video conference. It is the respectful submission of the petitioner most of the above mentioned shortcomings have come to the notice of the petitioner only on progress of evidence recording. Petitioner acceded to the evidence recording by way of video conference when it is ordered by the trial court hoping that it would be fully in compliance with the law and guidelines laid down by this Hon'ble Court. As soon as he came to know that evidence recording is progressing not in consonance with the expected manner petitioner approached the High Court seeking its intervention to ensure a fair trial. Hence High Court ought not to have discarded his grievance against such evidence recording holding that he had already participated in the process without challenging the initial order.

G. That right to have a fair trial has been held by this Hon'ble Court to be part of Articles 14 and 21 of the Constitution of India. Each and every stage of a fair trial must be held in accordance with the procedure established by law and the accused should be given equal protection of law. It is a matter of fact that there is no definite procedure having been established by law to govern the examination of foreign witnesses through video conferencing in a criminal trial. It is true that this Hon'ble Court has upheld the

evidentiary value of depositions made through video conference in above cited case. But the witness to be examined in that case was only to adduce expert evidence and not direct evidence. Evidence adduced by expert witness can be relied upon as documentary evidence when it comes through video conferencing. But in the case in hand, the prosecution wants to examine none other than the de-facto complainant, who is the one and only eyewitness. The offence alleged against petitioner and punishment prescribed for the same are very grave and serious in nature. Further, the witness, who was sought to be examined through video conferencing is the prime witness of prosecution. All these factors need a serious consideration by this Hon'ble Court so as to settle the law of larger public importance.

- H. That the present case is a webcam deposition by a prime witness over Skype which patently lacks any privacy in as much as to say that the proceedings cannot be treated as in camera proceeding thus violating the procedural requirement of a criminal trial on rape charges.
- I. That this Court had held that evidence by video conferencing has to be done on some conditions and the conditions are yet to be laid down by this court till date.
- J. That this Hon'ble Court had permitted recording of evidence in a criminal trial on the previous occasions only for recording the evidence of an expert and that too for

offences u/s. Sec.338, r/w Sec. 109, 114 IPC. In that case this court observed that evidence by Video conferencing satisfies the object of provisions of Sec. 273 Cr PC in as much as to say that the evidence be recorded in the presence of the accused. This Hon'ble Court proceeds to observe that, *Recording the evidence by video conferencing also satisfies the object of providing, in Section 273 that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanor. In fact the facility to play back would enable better observation of demeanor. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the*

Accused. Of course, as set out hereinafter, evidence by

Video Conferencing has to be on some conditions.

K. That before issuing a Commission to record evidence by way of video conference one attempt shall be made to examine the witness in Court. The learned Magistrate shall issue a summons to the witness requiring him to appear before the Court and give evidence within a reasonable period. If the witness is unable to come to India and is willing to give evidence by video conference, necessary Commission has to be issued by the Ld. Trial Court to go to the office of the V.S.N.L. and arrange for a video conference as held in Dr. Praful B. Desai's case.

L. That the Court below failed to appreciate the Skype was not the equivalent substitute for Video Conferencing. The Skype was a freeware easily downloadable to any computer system and the camera used are webcams which can deliver only poor quality of sound and pictures.

The Skype as a platform was not secure and it was in public domain causing serious security concerns.

Whereas Video Conferencing is a technology where Full High Definition Cameras (HD) are used which refreshes about 50-60 frames per second(fps). The cameras used are PTZ cameras where it can Pan, tilt and Zoom which would capture the individual gestures and the background and settings. It also provides for multi-way screening where the speaker and the listener and the

Judge and the scribe are all visible at a single point of time. Thus video conferencing is an expensive and much reliable, secure and effective method of recording evidence and is no comparison to Skype used for web chatting.

M. That the Ld. Trial Court failed in its duty to install the infrastructure for video conferencing under its direct control and supervision. However it is evident that the web chatting facility was installed, operated and controlled by the prosecution and the court had no control over the same.

N. That on 21.01.2015 the Ld. Trial Court orders the deposition of the witness to be send by email to the witness for signature and on the same day a copy of the same is ordered to be given to the parties. All this cause confusion on the authenticity of the document. The order sheet says that later the signed copy of the deposition of PW-5 was received after signatures which invariably show that it was only after the date of 21.01.2015 as it was to reach from Ireland to Calcutta after signatures.

O. That the Hon'ble High Court failed to give orders or prescribe procedures for proving the material exhibits like clothing etc. The Hon'ble High Court ordering the Ld. Trial Court to send the documents to be proved by the witness to be sent to the witness in advance failed to order the

status of material exhibits like the clothing etc which need to be proved.

P. That the deposition of PW-5 made hereinssofar in ST No. 1(8) of 2014 pending at the court of Ld. Additional Sessions Judge, 8th Court at Alipore would be barred by estoppel for having made the Ld. Trial Court believe by PW-5's statement in the said deposition to be true and correct and thereby, is estopped from denying the truth of that thing.

Q. That the present proceedings in recording the deposition of PW-5 is in blatant contravention of the E-committee guidelines of this Hon'ble Supreme Court which details the mode and manner in which video-conferencing is to be done in courts, the apparatus to be used for such purpose etc. and for this reason alone, the trial so far is vitiated.

6. GROUND FOR INTERIM RELIEF:

A. That through the present petition petitioner craves to impeach the examination of prosecutrix through video conference in the case charged against him under Section 376 (1) of IPC. There are blatant violation of procedural requirements and various provisions of Code in the trial that is going on against this petitioner. The examination of foreign witness through video conference is not according to any procedure established by law. In such a situation if the trial is allowed to continue and the

court is allowed to act upon the evidence so recorded, this petitioner would be deprived of his Fundamental Rights enshrined in Articles 14 and 21 of the Constitution. Further, no prejudice would cause to anybody if the trial is put on hold until this Hon'ble Court examines the record and lays down necessary guidelines to be followed by the trial court to ensure a fair trial.

B. That the petitioner has a good case on merits and the balance of convenience also lies in his favour. That if the operation of the impugned orders herein is not stayed, not only the petitioner but also the general public at large will suffer irreparable loss and injury and hence this Hon'ble Court may be pleased to stay the operation of the impugned order in the interest of justice.

C. That the Petitioner is gravely prejudiced by the non-supply of recordings made in the video conference recording of PW-5 as he is constrained to demonstrate the loss caused both in content and intent between the deposition actually made and recorded in the video conference recording and such deposition reduced in writing by the Ld. Trial Court.

7. MAIN PRAYER

In view of the above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) Grant Special Leave to Appeal against the impugned final Judgment and Order dated 17-06-

2015 passed by the High Court at Calcutta in CRR

No. 1285/2015;

- (b) Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

8. INTERIM RELIEF

In view of the above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) Pass an ad-interim ex-parte stay order staying the trial proceedings of ST No. 1(8) of 2014 pending at the court of Ld. Additional Sessions Judge, 8th Court at Alipore until further order
- (b) Pass an interim order to Ld. Trial Court to preserve and produce before this Hon'ble Court all the video conference recordings and video conferencing gadgets used in the recording of evidence of PW-5 in the Ld. Trial Court.
- (c) Pass an interim order to the Ld. Trial Court to supply the Petitioner with all such video conference recordings made while recording the evidence of PW-5;
- (d) Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstance of the case.

**AND FOR THIS ACT OF KINDNESS YOUR PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY.**

DRAWN BY:
MANOJ V.GEORGE

FILED BY:

ZULFIKER ALI P.S

Advocate-on-Record for the petitioner

Drawn On: 16-09-2015

Filed On: 17-09-2015

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRL.) No. OF 2015**

IN THE MATTER OF:-

SUJOY MITRA

....PETITIONER

VERSUS

STATE OF WEST BENGAL

....RESPONDENT

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court / Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds, have been taken therein or relied upon the Special Leave Petition. It is further certified that the copies of the documents / annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner, whose affidavit is filed in support of the Special Leave Petition.

Filed By:-

ZULFIKER ALI P.S

Advocate-on-Record for the petitioner

Place: New Delhi

Filed On : 17.09.2015

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No. OF 2015

IN THE MATTER OF:-

SUJOY MITRA

....PETITIONER

VERSUS

STATE OF WEST BENGAL

....RESPONDENT

AFFIDAVIT

I, Sri Tarun Kumar Mitra S/o. Late Timir Mitra, aged about 68 years, residing at 138 Shyamaprasad Mukherjee Road, Police Station Kalighat, Kolkata 700 026, do hereby solemnly affirm and state as under:-

1. That I am the father of the petitioner in the above-mentioned petition and serving as the Pariokar in the aforesaid petition as the petitioner is in Judicial Custody and as such I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
2. That I have read and understood the contents of the above mentioned Special Leave Petition, the list of dates and I state that the facts stated at page **B** to **O** of the list of dates and para **1** to **8** at pages **17** to **38** of the Petition and applications are true and correct to my knowledge.
3. That I state that the Annexures annexed to the Writ Petition are true copies of the originals.

DEPONENT

VERIFICATION

Verified at Kolkata on this 17TH the September 2015 that the contents of the affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT

District: 24 Parganas South

IN THE HIGH COURT AT CALCUTTA

Criminal Revision Jurisdiction

CRR NO. 1285 of 2015

In the Matter of:

ANNEXURE-P1

An application Under Section
482 of the Code of Criminal
Procedure, 1973

And

In the matter of:

Order dated 18th February 2015
passed by Additional District and
Sessions Judge 8th Court,
Alipore, in case no. SC 1(10) of
2013 corresponding ST No. 1(8)
of 2014 under section 376(2) of
the Indian Penal Code 1860.

And

In the matter of:

Sujay Mitra Alias Sujoy Mityra,
son of Tarun Kumar Mitra,
residing at 138 S P Mukherjee
Road Kolkata

700 026;

... Accused/Petitioner (In

Jail)

Verses

State of West Bengal

... Opposite

Party

To the Hon'ble Mrs. Manjula Chellur The Hon'ble Justice of the Hon'ble High Court at Calcutta and his companion Justice of the said Hon'ble Court.

The humble petition of the petitioner above named most respectfully

SHEWETH:

1. The petitioner is a citizen of India and resides at the address mentioned in the cause title.
2. That the petitioner is the sole accused in case no. SC 1(10) of 2013 corresponding St No. 1(8) of 2014 arising out of Kalighat Police Station case no. 164 of 2013 dated 01/06/2013 under section 376(1) of the Indian Penal Code 1860. The petitioner is in custody the trial is going on.
3. That the allegation against the accused person stated in brief is that sometimes in between 22.00 hours in the night if 31/05/13 and 07.00 hours in the morning of 01/06/2013 the accused person befriended the complainant namely Louise Florence who is a foreign national, and partied with her whole night, later the accused person deceitfully took complainant to his residence and committed the offence under section 376(1) of the Indian Penal Code 1860.
4. That one First Information Report being was drawn on the basis of the complaint made by the defacto

complainant and the Kalighat Police case number 164 dated 01/06/13 has been started against the accused person. After conclusion of the investigation charge sheet was submitted being no 139 dated 01/07/02013 under section 376(1) of the Indian Penal Code 1860.

5. That after commencement of the criminal trial it was found that the defacto complainant is a foreign national and is resident of Ireland, and the defacto complainant stated that she wont' be able to come before the Learned Court of Trial as she is currently in Dublin, Ireland, hence the prosecution found a problem of adducting evidence by the victim appearing before the Learned Additional District and Sessions Judge, 8th Court, Alipore.
6. That to solve such problem prosecution set up facilities for video conference through which the evidence is supposed to be taken up from the victim lady from Ireland.
7. That on several occasion strong objections was raised on behalf of the accused/petitioner that the Learned Court of Trial is not complying with the guide lines as laid down by the Hon'ble Apex Court regarding this type of Video Conference Trial and examination of defacto complainant.
8. That the objections as submitted on behalf of the accused/petitioner was not given any heed and the Learned trial Court below continue to record evidence

through video conference of the defacto complainant, without passing any order on the objection so raised, and without conforming the guidelines as laid down by the Hon'ble Supreme Court of India.

That the relevant orders of the Learned Court below has been applied for but could not be obtained till filling of the instant petition, and the petitioner craves leave to produce the saem through a supplementary affidavit if needed for delivery of justice, at the time of hearing.

9. That your petitioner apprehends that there will be serious miscarriage of justice if the Learned Court so continue to record evidence through video conference without conforming the guide lines as laid down by the Hon'ble Apex Court.
10. That on 18/02/2015 the accused petitioner being prejudice with the procedure of recording of evidence through video conference by Learned Additional Sessions Judge, 8th Court at Alipore filed on application for adjournment to move before the Hon'ble High Court at Calcutta for obtaining necessary direction for in order to comply with the guidelines introduced by the Hon'ble Apex court on Video Conference evidence recording.

The application of objection is annexed herewith and marked as annexure "p1".

11. That by an impugned order no 28 datd 18/02/2015 the Learned Additional Sessions Judge, 8th Court at Alipore rejected the application Sessions Judge, 8th Court at Alipore rejected the application observing that he defence is trying to take unnecessary adjournment as the procedure of taking evidence thorough video conference is conforming all the necessary guidelines.
12. That being highly aggrieved by and dissatisfied with the Order no 28 dated 18/02/2015 passed by Learned Addition Sessions Judge, 8th court at Alipore in case no. SC 1(10) of 2013 corresponding ST No. 1(8) of 2014 under section 376(1) of the Indian Penal Code 1860 arising out of Kalighat Police Station case no 164 dated 01/06/2013 under section 376(1) of the Indian Penal Code your petitioners beg to move your Lordship the following amongst other:

GROUND

- I. For that the impugned order no 28 dated 18/02/2015 passed by Learned Additional Sessions Judge, 8th Court at Alipore appears to be illegal and biased,
- II. For that the Learned Additional Sessions Judge, 8th Court at Alipore failed to apply the judicious mind

when rejecting the application seeking direction for conforming guide lines as set by the Hon'ble Apex Court and thus liable to be set aside.

- III. For that the Learned Additional Sessions Judge, 8th Court at Alipore have grossly failed to understand the procedure of recording evidence by video conferencing as envisaged under section 243 Code of Criminal Procedure, 1973 read with section 65B of the Indian Evidence Act, 1872.
- IV. For that the Learned Additional Sessions Judge, 8th Court at Alipore failed to appreciate that it is very much necessary to file an affidavit or undertaking duly verified, to identify the witness to secure that the person who is shown as the witness is the same person as who is going to depose on the screen and such copy of the identification verification must be made available to the defence/other side.
- V. For that the Learned Additional Sessions Judge, 8th Court at Alipore is erred in law while recording depositions by not considering that the witness has not been properly identified.
- VI. For that the Learned Additional Sessions Judge, 8th Court at Alipore have failed to appreciate that video conferencing is permissible only if the witness is in a country which has an extradition treaty with India and under law contempt of Court and perjury are punishable offence.

- VII. For that the Learned Additional Sessions Judge, 8th Court at Alipore failed to consider that the Government of India and the Government of Ireland has no such arrangement as required by the section 285 of the Code of Criminal Procedure, 1973.
- VIII. For that the Learned Additional Sessions Judge, 8th Court at Alipore failed to comply the guidelines of the Hon'ble Apex Court that in absence of such arrangements as required under 285 of the Code of Criminal Procedure, 1973 no court in India can record depositions of witness through video conferencing method.
- IX. For that the Learned Additional Sessions Judge, 8th Court at Alipore have failed to pass a clear and specific order/direction as to how and what measurement are to be taken before recording as evidence by video conference.
- X. For that the Learned Additional Sessions Judge, 8th Court at Alipore have failed to appreciate the guidelines for recording evidence by video conference as envisaged in 'State of Maharashtra verses Dr. Praful B Desai and Anr' reported in AIR 2003 SC 2053.
- XI. For that the Learned Additional Sessions Judge, 8th Court at Alipore is biased and passed without proper consideration of the guidelines as set out by the Hon'ble Apex Court.

- XII. For that it is expedient in the interest of Justice to uphold the dignity of law that the impugned order is set aside.
- XIII. For that the impugned order is otherwise bad in law and as such the same is liable to be set aside.
13. That this application is bonafide and made in the interest of Justice.

In this aforesaid circumstances it is prayed that your Lordship may graciously be pleased to call for the records, issue a Rule, calling upon the opposite party to show cause as to why, the impugned order no 28 dated 18/02/2015 passed by Learned Additional Sessions Judge, 8th Court at Alipore in case no. SC 1(10) of 2013 corresponding ST No. 1(8) of 2014 under section 376(1) of the Indian Penal Code 1860 arising out of Kalighat Police Station case no 164 dated 01/06/2013 Under Section 376(1) of the Indian Penal Code whereby rejecting the application seeking to obtain direction for complying guidelines set out by the Hon'ble Apex Court on recording of

evidences through video conference,
shall not be set aside

And

After hearing the cause that may be shown and after perusal of the records make the rule absolute.

And

Pass an order thereby cancel or quash or discard the evidence of the prosecution witness 1 so far taken

And

Pending hearing of the case pass an order of stay on all further proceeding in case no. SC 1(10) of 2013 corresponding ST No. 1(8) of 2014 under section 376(1) of the Indian Penal Code 1860 arising out of Kalighat Police Station case no 164 dated 01/06/2013 Under Section 376(1) of the Indian Penal Code.

And

Pass such order or further order or orders direction or directions as your lordship may deem fit and proper.

And for this act of kindness your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Sri Tarun Mitra son of late Timir Mitra, aged about 68 years, by faith Hindu, by occupation retired service holder, residing at 138 Shyamprasad Mukherjee Road, Kalighat, Kolkata 700 026, do hereby solemnly affirm and state as follows:

1. That I am the Tadvirkar of the petitioner and as such I am well acquainted with the facts and circumstances of the instant case. I have been duly authorized by the petitioner to affirm this affidavit on his behalf and I am competent to do so.
2. That the statement made in photograph no 1-6 are true to my knowledge, those made in photograph no 7, 8, 10, 11 are matter of records and rest are my humble submissions before this Hon'ble Court.

Prepared in my office
is known to me

Deponent

Advocate
Mr.

clerk to

Solemnly affirmed before me

On this day of April, 2015

Advocate

Commissioner

//TRUE & TYPED COPY//

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRL. M.P. NO. _____ OF 2015

IN

SPECIAL LEAVE PETITION (CRL.) No. _____ OF 2015

IN THE MATTER OF:-

SUJOY MITRAPETITIONER

VERSUS

STATE OF WEST BENGALRESPONDENT

**APPLICATION FOR PERMISSION TO FILE ADDITIONAL
DOCUMENTS IN THE ABOVE MATTER**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER

ABOVE NAMED MOST RESPECTFULLY

SHOWETH:

1. That the petitioner has filed the above mentioned Special Leave Petition from the impugned Judgment and Order dated 17-06-2015 passed by the High Court at Calcutta in CRR No. 1285/2015. The petitioner craves leave that this

application may be read and treated as part of the said Special Leave Petition.

2. That the Petitioner most humbly submits that certain important documents most crucial for the necessary adjudication of the present relief as prayed by the Petitioner had been inadvertently missed out from being placed on record before the Hon'ble High Court of Calcutta. The **Annexure P1** has been produced along with the SLP.
3. That in present case it is the prosecution allegation that in the intervening night of 31.5.2013 and 1.6.2013 the petitioner befriended the prosecutrix who is foreign national and partied with her whole night and later in the night deceitfully took her to his residence and committed the offence U/S 376 (1) of the IPC.
4. That an FIR was registered on 1-6-2013 at Kalighat police station u/s 376 IPC on the basis of complaint registered by prosecutrix. A true copy of the FIR No. 164/2013 dated 1-6-2013 at Kalighat Police Station is produced herewith and marked as **ANNEXURE-P2 (page 57 to 59)**
5. That during the course of trial prosecution moved an application before the Ld. Trial Court on 8-9-2014 that the prosecutrix is resident of Ireland and she is not available in the country for examination. It is pertinent to note that Service of summons as provided u/s. 69 Cr PC was not

complied in this instant case. It was added that investigation agency had made their attempt to inform the victim through email requesting her to appear before the court to adduce evidence but no reply was received and thus, the prosecution sought permission of the Ld. Trial Court to record evidence of the prosecutrix arrayed as PW-5 through video conferencing.

6. That inspite of the Petitioner's vehement objection the trial court allowed prosecution's application and directed the prosecution to submit a report as to arrangements made by the state government for recording of evidence of the victim through video conference. A true Copy of the order dated 17-9-2014 passed by the Ld. Court of Additional Sessions Judge, 8th Court at Alipore is produced herewith and marked as **Annexure-P3 (page 60 to 70)**.
7. That the report submitted by the prosecution on arrangements made for recording evidence through video conference was accepted by the court as satisfactory and the date for evidence of prosecutrix by way of video conference was notified to 15-12-2014. A true Copy of order dated 24.11.2014 passed by the Ld. Court of Additional Sessions Judge, 8th Court at Alipore is produced herewith and marked as **Annexure-P4 (page 71 to 72)**

8. That when video conference recording of the victim commenced on 6-1-2015 the court noticed certain major irregularities in the process and directed the prosecution to stop the examination. Evidence recording was adjourned and the court laid down some guidelines to be observed for recording of evidence by way of video conference. A true copy of order dated 6-1-2015 passed by the Ld. Court of Additional Sessions Judge, 8th Court at Alipore is produced herewith and marked as **Annexure-P5 (page 73 to 75).**
9. That the examination of the prosecutrix by the prosecution was recorded in the light of the Ld. Trial Court's direction dated 6-1-2015. A true copy of the deposition of PW5 dated 21-1-2015 is produced before and marked hereto as **Annexure-P6 (page 76 to 82)**
10. That it is to be noted herein that technology used by the prosecution was not in terms of guidelines laid down by this Hon'ble Court in this regard. No CIS application had been used but the entire communication was through only Skype. The counsel for the petitioner pointed out the shortcomings in the procedure before the trial court and expressed his grievance. He further prayed for an adjournment so that the accused/petitioner would get an opportunity to move the High Court for specific direction to comply the guidelines of Hon'ble Supreme Court.

However the trial court rejected this prayer and application moved by petitioner in this regard was dismissed. A true Copy of order dated 18-2-2015 passed by the Ld. Court of Additional Sessions Judge, 8th Court at Alipore is produced herewith and marked as **Annexure-P7 (page 83 to 87).**

11. That the petitioner had moved an application for fixing fresh schedule for evidence before the Ld. Trial Court in lieu of the Revision Petition in the Hon'ble high Court that the petitioner proposed to file against the above mentioned order dated 18.02.2015 passed by the Id. Sessions Court. The Ld. Trial Court deferring the recording of evidence of PW/5 for a period of one Month disposed of the said application of the petitioner. A true Copy of order dated 09.03.2015 passed by the Ld. Court of Additional Sessions Judge, 8th Court at Alipore is produced herewith and marked as **Annexure-P8 (page 88 to 91).**
12. That apprehending miscarriage of justice on account of flawed recording of evidence of the main witness, petitioner moved High Court U/S 482 Code of Criminal Procedure seeking inter alia to quash or discard evidence of prosecutrix recorded so far by the trial court.
13. That the High Court, by impugned judgment dated 17-6-2015 dismissed the petition filed by this petitioner U/S 482

of Cr. PC. The prosecution continued recording of evidence. A true copy of the deposition of PW5 dated 17-7-2015 is produced herewith marked as **Annexure-P9 (page 92 to 93)**

14. That the Prosecution continued recording of evidence. A true copy of the deposition of PW5 dated 3-8-2015 is produced before and marked hereto as **Annexure-P10 (page 94 to 96)**.

15. That the prosecution concluded their recording of evidence. A true copy of the deposition of PW5 dated 4-8-2015 is produced before and marked hereto as **Annexure-P11 (page 97)**.

16. That on 13-8-2015 the defence counsel started cross examination of PW5. A true copy of the deposition of PW5 dated 13-8-2015 is produced before and marked hereto as **Annexure-P12 (page 98 to 100)**.

17. That the Defence counsel continued to cross examines the witness but raised serious objections on continuation of recording of evidence in this manner. He raised serious objection regarding non supply of call details, video footage of the hotel. There was a specific plea that Skype is not the technology prescribed by this court in the proceedings. The Petitioner requested for a soft copy of the video conference happened till date which was observed as an added facility by this Hon'ble Court in State of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC 601. However the Ld. Trial Court out rightly rejected the

prayer of the petitioner. A true copy of the order dated 21-8-2015 passed by the Ld. Trial Court is produced before and marked hereto as **Annexure-P13 (page 101 to 106).**

18. That it is respectful submission of the petitioner that examination of prime witness in the case through video conference is not at all in consonance with the law settled by this Hon'ble Court especially in the Policy and Action Plan Document of Phase II of E Courts Project. A true and correct copy of Chapter VII on videoconferencing is annexed here to as **Annexure P-14 (page 107 to 108).**
19. That the present proceedings in the court below are in blatant violation of the guidelines laid down by this Hon'ble Court and Criminal procedure established in the country and thus, the Petitioner craves the urgent indulgence of this Hon'ble Court to lay down a definite guideline on the issue to hand to prevent anymore prejudice to the Petitioner.

PRAYER

It is, therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Accept the additional documents marked as **Annexure P-2 to Annexure P-14** and take on record the same for the proper adjudication and disposal of the Special Leave Petition; and
- (b) PASS such other order as this Hon'ble Court may deem fit to grant under the facts and circumstances of the case.

**AND THE PETITIONER SHALL, AS IN DUTY BOUND,
EVER PRAY**

Filed by:

(ZULIFIKER ALI P. S.)
Advocate for the Petitioner

Place:- New Delhi.
Filed on : 17.09.2015

ANNEXURE-P2**FIRST INFORMATION REPORT**

Information of a cognizable crime reported under section 154 Cr. PC at P.S.

1. Dist- SD/Kolkata Sub-Divn-LD. CJM, Alipore

P.S. Kalighat Year 2013 FIR No 164 Date
01/06/13

2. (i) Act IPC Sections 376(1) (ii) Act
Sections

(iii) Act Section (iv) Other Acts &
Sections

3. (a) General Diary Reference: Entry No 63 Time
21:45 hrs

(b) Occurrence of Offence: Day Date Sometimes in
between 22:00 hrs of 31/05/13 and 07:00 of 01/06/13

(c) Information received: Date 01/06/13 Time 21:45 hrs

G.D. No. 63 at the Police Station:

4. Type of Information: Written/Oral Letter of complaint

5. Place of Occurrence: (a) Direction and Distance from P.S.
Approx. ¼ km South-East

(a) Address 138, S.P. Mukherjee Road Kolkata-26 Beat
No

(c) In case outside limit of this Police Station, then the
name of P.S. District

6. Complainant/Informant:

(a) Name Louisa Florence

(b) Father's/husband's Name Alec Florence

(c) Date/Year of Birth 21 years

(d) Nationality Irish

(e) Address 7, Drumahurk, Butlersbridge, Cavan, Ireland.

7. Details of Known/suspected/unknown/accused with full particulars: Sujoy

(Attach separate sheet, if necessary)

8. Reasons for delay in reporting by the Complainant/Informant:—

9. Particulars of properties stolen/involved: (Attach separate sheet, if required)—

10. Total value of properties stolen/involved: —

11. Inquest report/U.D. :Case No. if any: —

12. FIR Contents: (Attach separate sheets, if required) The accused person befriended with the Complainant, an Irish lady, and parties with her at different places whole night. Later he took the complainant to his residence deceitfully and forcefully committed rape to the complainant.

13. Action taken: Since the above report reveals commission of offence(s) u/s 376(1) IPC SI M. Singh of Sec T2 registered the case and took up the investigation/directed u/o of O/C Sec T2 to take up the investigation/transferred to P.S. on point of jurisdiction. FIR read over to the Complainant/Informant admitted to be correctly recorded and a copy given to the Complainant/Informant free of cost.

The letter of complaint

has been treated as FIR.

Manish Singh

SI/T2

01/06/013

Signature/Thumb Impression of
the Complainant/Informant

Signature of the
Officer-in-charge.
Police Station with

Name SUBRATA DEY

Rank Inspector of
Police

Number, if any Addl.
O.C., Kalighat P.S.

01/06/13

//TRUE & TYPED COPY//

ANNEXURE-P3

**HON'BLE ADDL. SESSIONS JUDGE, 8th COURT AT
ALIPORE**

S.C. 1(10)/2013

ST 1(8)/14

ORDER NO. 6 DATED 17.09.2014

Today is fixed for hearing of the petition dated 08.09.2014, filed by the prosecution and also hearing of the bail application, filed on behalf of the accused dated 08.09.2014.

Sole accused, Sujoy Mitra, is produced from J.C. Both the petitions are taken up for hearing.

Ld. Advocate for the prosecution submitted that the victim lady is a resident of Ireland and after commission of offence she stayed a long period of time in India but recently she left for her own country.

Ld. P.P -in- charge further submits that the Women Grievances Cell, investigation agency made their attempt to inform the victim through e-mail, requesting her to appear before the court to adduce evidence, but no reply had yet been received.

Ld. P.P-in- charge further submits that attempt was made through the Embassy of Ireland for getting effective contact with the victim lady for the purpose of her evidence, but the

Embassy of Ireland requested the Commissioner of police to take evidence of the victim via video conference.

Ld. P.P. In- charge further submits that the Joint Secretary of Govt. of West Bengal intimated the Commissioner of Police, Kolkata to move before this court for taking evidence of the victim through Video Conference.

Ld. P.P. In- charge further submits that it would be time consuming to send Summon upon the victim for appearance before this court and to expedite the trial video conference of the victim is very much essential.

Ld. Advocate of the accused raised vehement objection and submitted that instead of taking recourse of service of summon upon the witness, as prescribed under the provision of Cr.P.C prosecuting agency had adopted an avenue which is alien, unknown to the procedure of law and thereby instead of establishing any contact with the defacto complainant, they have resorted an avenue to keep in touch with the Embassy though the Embassy had no role to play in the context of the present case.

Ld. Advocate of the accused further submits that as the prosecution is not in a position to bring the defacto complainant before the court for adducing her evidence and to avoid such precarious situation, or embarrassment, they have taken the purported request of Katie Morisroe and

tried to purport a connection made in between her and the Ld. L.R. Govt. of West Bengal, although neither in the procedural law nor in the Indian Evidence Act there is at all any provision of any interference by the Ld. L.R. for disposal of any criminal trial.

Ld. Advocate for the accused further submitted that as the prosecution is well aware that there no prevailing or existing or available set up for arrangement to this court for recording evidence of particular witness through video conference and moreover during examination of the defacto complainant certain materials and documents need to be exhibited before the particular witnesses, which is sheer impossible or virtually inconvenient for the accused at the time of evidence through video conference.

Ld. Advocate of the accused further submits that unless and until the victim is physically appearing before the court. It will not be possible for them to tender relevant documents and material before her and cross-examine her in the light of such materials.

Ld. Advocate for the accused further submitted that the petition, filed by the prosecution for recording evidence of the victim through video conference is liable to be rejected.

Heard both sides, Perused the petition and the objection, field. From the record, it reveals that the victim lodged a

complaint before the Kalighat P.S. stating inter alia that she has been sexually assaulted and raped by the accused and on the basis of such complaint, investigation was caused, the accused was arrested and the charge-sheet was Submitted and after commitment, charge was framed and trial has commenced.

After going through the record, I find that the evidence of the victim is very much essential for proper adjudication of the case, but the victim who is a citizen of Ireland had returned back to her own country and request has been made by the Embassy of Ireland through the Ld. P.P-in-charge for recording the evidence of the victim on video conference.

Ld. Advocate of the accused wants to draw the attention of this court stating that the absence of the victim/ witness in the trial court would thrust them in difficulty as certain materials and documents are needed to be exhibited before the particular witnesses.

The main objection of the learned counsel for the accused is that the statutory provisions have to be followed by the Courts in the trial of criminal case proceedings. He vehemently argues that seeing the accused in the screen, the criminal court proceedings could not be effective.

The submissions of the learned counsel of the accused are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to Submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus, it is clear that so long as the accused and/or his p leader and present when evidence in recorded by video Conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of Section 273 of the Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law."

The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video-conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court in State of Maharashtra V. Dr. Praful B. Desai (2003) 4 SCC 601. There is major difference between substantive provisions

defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaidens of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions.

In Abdul Karim Telgi @ Lal @ Karim case, the same view has been observed by the Hon'ble Court.

The word "presence" and its meaning came for consideration before the Hon'ble Supreme Court in a criminal case. The Hon'ble Supreme Court in the case of State of Maharashtra Va. Dr. Praful B. Desai and another reported in (2003) 4 SCC 601 in detail has considered the requirement of recording of evidence in presence of the accused as required under Section 273 of the Criminal Procedure, 1973 and held that such requirement of "Personal presence" is not the actual physical presence but it can be through video conferencing.

The Hon'ble Supreme Court considered a judgment of the Supreme Court of the United States of America, in the case of Maryland Vs. Santra Anu Craig, 497 U.S. 836 (1990) wherein it has been held that recording of evidence by video-conferencing was not a violation of the Sixth Amendment (confrontation Clause).

The Hon'ble Supreme Court held that Criminal Procedure Code is an ongoing statute. The Hon'ble Supreme Court in the case of Dr. Praful B. Desai held that thus the law is well settled that the doctrine of "Contemporanea exposition est Optima et fortissima in lege" has no application when interpreting a provision of an ongoing statute/ Act like the Criminal Procedure Code.

Apart from interpreting the word "presence" and "personal" It the Hon'ble Supreme Court held that the above words are required to be considered in the light of revolutionary changes in technology communication and transmission and the marked improvement and also it has been held that video- conferencing mode is in a fact, satisfies the requirement of the "Presence" of the parties.

The same view has been Observed in Upasana Bail Vs- Secretariate case.

Therefore, the interpretation of the Supreme Court on that score is that in the Court physical presence of a person may not be required for the purpose of adducing evidence. Evidence includes video conferencing. Therefore, there cannot be any embargo so far as the present matter is concerned. Video conferencing is an advancement of science and technology which permits one to see, hear and talk with someone far away with the same facility and ease

as if he is present herein. The only difference is that one cannot touch the person concerned. Even then, it will not disentitle a person to give evidence witness. More so, if we watch something through the same can it be said that we have not watched it? The essential requirement of advancement of technology and its application is to make things easier and flexible. The Court is meant for the people. So it is required for the Court to give reasonable and appropriate facility to the people. Now-a-days several steps are taken as a matter of policy to reach to the bottom level of the people. We are making various types of Courts and Benches and offering justice to facilitate the people. Video Conferencing is one such facility. It is to be remembered that by virtue of an amendment and insertion of Section 65A and 65B of the Evidence Act a special provision as to evidence relating to electronic record and admissibility of electronic records has been introduced with effect from 17th October, 2000. Consequential amendments are also made therein. Therefore there is no bar of examination of witness by way of Video Conferencing being essential part of electronic method. Hence, Such prayer cannot be ignored as unnecessary. It is to be evaluated with the amount of delay, expenses or inconvenience. If it appears that electronic video conferencing is not only much

cheaper but also facilitates the Court and avoids delay of justice, a practical outlook is to be taken by the Court.

However, in allowing such prayer, Court will first of all consider whether linkage of such facility will be available between two places or not.

In this regard prosecution is directed to have consultation with the State Government in the light of the above observation and report before this court on 05.11.2014 what type of arrangement can be made by the state Government regarding recording of evidence of the victim on video conference.

To date for recording of evidence of C.S.W. no. 5, Anwar Jamal.

Accused is remanded in correctional home till date.

Let a copy of this order be given to the prosecution for taking necessary action.

Dictated & Corrected by me.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Later

Bail petition has been filed on behalf of the accused Sujoy Mitra. Bail petition is taken up for hearing.

Ld. Advocate of the accused submits that the accused is in custody since inception of this case and as per prosecution, there is no chance of expedite the trial as the victim has returned back to Ireland. Moreover, it would not be possible for the accused to visit Ireland and temper the witness.

Ld. Advocate of the accused prays for releasing the accused on bail, considering the detention of the accused.

Ld. P.P-In-Charge raised vehement objection and submitted that the bail application of the accused person is rejected by the Hon'ble High Court and also by this Court and the prosecution tried her level best to examine the witnesses as quick as possible and at present if the accused is released on bail he may create influence on the other witnesses and temper evidence.

Heard both sides, perused the application, filed on behalf of the accused. From the record it reveals that the accused is in custody since the inception of this case. From the record it also reveals that bail application of this acc-used has been rejected on 31.03.201 by the Hon'ble High Court Calcutta in connection with C.R.M. No. 2842 of 2014. More-over, the

bail application of the accused person has also been rejected by this court on 11.06.2014. moreover trial is in progress.

Considering all these and also considering the gravity of the offence, I do not find it is fit case for granting bail at this stage.

Hence, the bail application of the accused person stands rejected.

Dictated & Corrected by me.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore, South 24-Pgs.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore, South 24-Pgs.

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ANNEXURE-P4

**HON'BLE ADDL. SESSIONS JUDGE, 8th COURT AT
ALIPORE**

S.C. 1(10)/2013

ST 1(8)/14

ORDER NO.10 DATED 24.11.2014

Today is fixed for production of the accused person and supply of documents by the prosecution regarding what arrangements has been made for recording the statement of the victim through videography.

Accused is produced from J.C. Report filed by the prosecution regarding the arrangement and I find it is satisfactory.

To 15.12.2014 for evidence of victim by way of videography.

Prosecution is directed to make all the arrangement prior to 15.12.2014 and also inform the victim without any delay.

To date for production of the accused from J.C.

Dictated and corrected by me.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Later

A petition has been filed along with some photo-and compliance of this court's order.

To 06.01.2015 for evidence of the victim through video conference and production of the accused from J.C.

Let a copy of this order be given to the prosecution free of cost for necessary compliance.

Dictated Corrected by me.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

//TRUE & TYPED COPY//

ANNEXURE-P5

**HON'BLE ADDL. SESSIONS JUDGE, 8th COURT AT
ALIPORE**

S.C. 1(10)/2013

ST 1(8)/14

Order No. 12 dated 06.01.2015

Today is fixed for production of the accused and also the evidence of the victim/ Louise Florence.

Accused/ Sujoy Mitra is produced from the J.C. Arrangement has been made on behalf of the prosecution for recording evidence of the victim through video conference. After being satisfied with the instrument arranged by the prosecution and the mode of recording of the evidence of the witness, the prosecution was directed to start audio video link for recording the evidence.

This court inquired the witness whether the court room is visible to her or not and when she made assertive answer this court directed the prosecution to put question to her after taking oath from the witness.

The witness administered oath and victim/ Louise Florence is examined as PW-5. But, after short period of recording of witness, it reveals that the witness is sitting in her own room and the entire room is not visible in the videograph. Moreover, the entire figure of the witness is also not visible,

only the upper portion of her body is seen and objection raised by the Ld. Advocate of the accused.

I also find that there must be some transparency at the time of adducing evidence. In this respect, the evidence of witness is deferred today and the evidence of PW-5 is adjourned and the next date is fixed on 21.01.2015 for further evidence of the witness.

Lei. P.P In- charge is directed to make possible arrangement, so that the witness be present in the Embassy/ Consulate of India in Ireland, Observing the following guidelines:-

- (a) an officer would have to be deputed, either from India or from the Consulate/ Embassy of India in Ireland where the evidence be recorded. who would remain present and who will ensure that there is no person in the room where the witness is sitting while the evidence is being recorded.
- (b) the entire room where the witness be present on that day for adducing evidence must be visible at the time of recording evidence.

The Embassy/ Consulate of India in Ireland and also the Ministry of External Affairs of India and also the Embassy of Ireland in India are requested to extend their helping hands. So that proper arrangement be made and the

direction of the court be followed for recording of evidence of the victim/ Louise Florence on 21.01.2015 at 14.00 hours of Indian Standard time.

Hence, this court directs the prosecution to take proper and positive steps informing the Embassy/ Consulate of India in Ireland and also the Ministry of External Affairs of India and also the Embassy of Ireland in India through fax or e-mail much before the date of evidence.

To 21.01.2015 for further evidence of the victim and production of the accused from Correctional Home.

Let a copy of this order be given to the Ld. P.P-In-charge free of cost for making proper compliance.

Dictated & Corrected by me.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

Sd/- S. Kanjilal
8th Addl. Sessions Judge
Alipore. South 24- Pgs.

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ANNEXURE-P6

**HON'BLE ADDL. SESSIONS JUDGE, 8th COURT AT
ALIPORE**

S.C. 1(10)/2013

ST 1(8)/14

Further examination of PW-5, Louise Florence

resumes today [21.01.2015] through Video

Conference

The defendant and his friend stopped the car on the side of the road and introduced themselves for the first time and the defendant told me "you want ride. Are you looking for a taxi"? We said that we were looking for taxi. We were bit hesitant, but the defendant appears to me nice initially and so, I and my friend have decided to accept the offer. Camerun was my friend who was also volunteer. We have decided to accept the offer, so we got into the car of the defendant and his friend. They drove us to Tantra night club and on the way the defendant introduced himself that he was working in USA. He had very good in English, so I presumed him safe. We exchanged numbers. They drove us from hotel, Circular near Exide Road to Tantra. I invited them to celebrate my birth day at Tantra night club, where we have arena of my friends. They accepted my invitation and told that they would come. The defendant and his friend joined us at Tantra night club. I did not speak to them for a while, but they were just there.

[witness sometimes looks down]

They celebrated my birth day till half of 2' O clock at night. One Scottish man, my friend, I and defendant went to Michael's house at Sudder Street. Michael is my Scottish friend. We went to Sudder Street in Michael's apartment from Tantra. Michael and defendant, Sujoy began to take drugs, hallucinogenic. I did not take any drugs. I do not know from where the drugs was supplied. They began dancing and talking and they were quite hyper. Mainly the defendant was dancing and I was talking with Michael. Afterwards I got tired and decide to go home. I cannot remember the time at that particular period. I told the defendant and Michael that I want to go home and it is better to call a taxi. Defendant became angry and asked me to stay with them. He told me that he would share a taxi and drop me to my hotel on his way home. My hotel is Hotel Circular, AJC Bose Road. The defendant means Sujoy [objected to]. We got a taxi from Sudder Street and he said to me that he would drop me to my hotel before going home. But, he took me to his residence and told me that he forgot to ask the driver of the taxi to drop me to my hotel., Circular. He was frantic and very unpredictable. Initially I was angry, but I became frightened as he became frantic and unpredictable. He was aggressive and wanted me beside. I was hesitant. I went inside. He said not to be

frightened as his parents and tenant reside inside. I felt O.K. We went up stairs of his house. He asked me something to eat or drink. As he went outside the room, I lay down on a bed as I was tired and fell asleep. The bed was in his residence, but I was not sure whether it was his bed room or not. I lay down on the bed. I woke up and found that defendant coming to me and having intercourse with me. He went on top of me and he was very heavy and did not let me go. There was struggle and he was putting force on me. He did not have his dress on. He has taken his pant and under wear off and was pressing down his knees with his full body weight. I said to stop and get away from me. I tried to push him off and eventually he got off and left the room and I almost could not believe it. I was frightened that to do. I stayed a little while, I was afraid to leave the room as he was unpredictable as I do not know that he would do. I stayed in the room by myself. I cannot sure how long I stayed in the room. It was good long time, I may think. I did not want to leave the room because I was afraid what the defendant was capable of doing. He was angry when he left. So, I was frightened. Eventually, I fell back to sleep again. I slept on the bed. I woke up again. I am not sure whether it was after 20 minutes or half hours. I woke up again when he was on top of me again and this

time, I found that I was not wearing frock or under garments and he was also not wearing anything.

[the witness began to weep]

He really put force on me that time. I could not move. I could not leave. I could not leave. He was having intercourse with me again.

[Witness loons down again]

There was struggle as I was trying to push him off. He had put his hand in my private area and he kept saying to me "why didn't you participate"?

[Witness began to weep]

I said him to stop and began crying. He kept on continuing. I could not move because he was strong. Eventually I was able to force him away and pushed him off and eventually he let me go. I got up and put my dress on and tried to leave. He stood up the door abd asked "why didn't you participate" ? I was very scared and frightened. I was looking out to see whether there was any other way out. I saw windiw and balcony of the room and I thought to jump off the balcony. He eventually let me go. I went dwon stairs and he followed me and he asked me if he could go to my own home, But I did not respond. I got on a taxi and he then again asked me about the next meeting and I said no.

I came back to my hotel. Afterwards, I text my friend from the taxi, asking him if he was still awake. I could not make contact with him. I tried to make contact with Aaskar. I think his name is Aaskar, but I cannot remember. It may be 5:30 a.m. in the morning. I went straight to my room. I got scratches on my hands and there was bleeding from my vagina.

[Witness againn looks down]

I went up to my room. Afterwards I had shower. Then I tried to sleep and forget what have happened. In the morning I woke up by the staff of the hotel and my friend to check whether I was O.K. or not. There was a French Volunteer, but I cannot remember her name. When she came back, I told her what happened. Aaskar immediately told the police. When he called the police from the hotel, I asked him not to call police as I was frightened. I want to forget the incident. He drove me to the police station. It was Kalighat P.S. he asked me to narrate the statements what happened. I gave true example what had happened. They asked me whether I knew the place where I left. I said I could not remember the place, but I could recognise the place if I reach there. I was taken to different places to find where he lives. It took couple of hours. I started to had panic attack and ended up collapsing and fainted due to

anxiety. I was brought to a clinic with Aaskar. It was Aaskar's father's clinic, who is also a doctor. I cannot remember the place where the clinic situates. Thereafter the house of the defendant was detected and the defendant and the defendant was found in the house and arrested. We went to police station and I gave statement initially. I cannot remember in which police station, I gave my initial statement. I give oral and written statement in Kalighat P.S.

[AT this stage a written complaint is shown to the witness through web cam]

I cannot see it clearly, but I think it is of mine. The picture is very blurry. Though, the written statement is seen blurred to me, but I think it is of my hand writing. These are my signatures in the written statement.

The written complaint is marked as Ext. 3 (object to). The signatures of the witness in the written complaint are marked Ext. 3/1 and Ext. 3/2 respectively. I was asked to identify the suspect. I identified the defendant at Kalighat P.S. I gave oral statements to the Magistrate. I cannot remember after how many days of the incident, I gave statement before the Magistrate. I am not sure what the Magistrate did after hearing my statement. I cannot remember the name and the place where I gave statement before the Magistrate. It may be in the end of May place

where I gave statement before the magistrate. It may be in the end of May when the incident occurred. Initially I was in Darjeeling having voluntary working with the children. I made another statement before Kalighat P.S. because they wanted me clarify the incident in further details. I was brought to the hospital to have test. I used to stay in the hotel Circular, when I was in Kolkata, I deposited my passport in the hotel.

Doctor who examined me asked me what has happened. I narrated the incident to her in details. I told her exactly what happened. I went to the hospital couple of days later and I went to the University to be examined by a female doctor. She checked mein details and took my vaginal swab. She gave me emergency contraceptive pill. My consent was taken by the doctor before examining me. I think it was written consent.

[deferred on the prayer of the prosecution]

D/C by me

Addl. Sessions Judge, 8th Court
Alipore, South 24-Paraganas

//TRUE & TYPED COPY//

ANNEXURE-P7

**HON'BLE ADDL. SESSIONS JUDGE, 8th COURT AT
ALIPORE
S.C. 1(10)/2013
ST 1(8)/14**

Order No. 28 Dated 18.02.2015

Today is fixed for production of the accused and also further evidence of the victim/Louise Florence.

Sole accused/ Sujoy Mitra is produced from the J.C. Arrangement has been made on behalf of the production for recording evidence of the victim through video conference. At this stage, Ld. Advocate of the accused files a petition. Copy served. Petition is taken up for hearing.

Ld. Advocate of the petitioner/accused submits that without following guidelines as mentioned by the Hon'ble Supreme Court, trial through video conference has been allowed by this court and he prays for adjournment so that the accused would get an opportunity to move before the Hon'ble High Court for obtaining specific direction for complying the guidelines of the Supreme Court.

Ld. Advocate of the petitioner/accused further submits that as per guidelines of the Hon'ble Supreme Court, the technology used by the prosecution in recording evidence, is not of the one as mentioned in the guidelines and CIS application has not been used by the prosecution and he prays for an adjournment.

Ld. P.P. In-charge raised strong objection and submitted that the prosecution has followed all the guidelines as per directions of this court and not only that the witness was also directed to appear at Embassy of India, situated in Ireland for recording statement through video conference.

Ld. P.P. In-charge further submits that only to delay the proceeding, defence filed this type of petition.

Heard both sides. Perused the petition dated 18.02.2015, filed by the Ld. Advocate of the accused. From the record which reveals that charge has been framed on 06.08.2014 and thereafter trial has commenced and this vital witness i.e. the victim could not be produced from Ireland and the prosecution filed a petition for recording the statement of the victim through video conference and after hearing both sides this court was pleased to allow the petition dated 17.09.2014 and thereafter the victim was examined as PW-5 on 06.01.2015. On that day the Defence raised objection that the victim was adducing, evidence, sitting at her home in Ireland and the examination was deferred and the witness was directed to appear in the Embassy of India, situated in Ireland but unfortunately no objection was raised by the defence regarding the procedure in recording the statement of the victim through video conference. In 21.01.2015 again the statement of the

victim was also recorded in presence of accused and the Ld. Defence again did not raise any objection regarding the procedure of recording of evidence, nor mentioned that the evidence of the victim recorded through video conference was allowed without following the guidelines of the Supreme Court.

I have also gone through the document supplied by the defence. At the time of passing order on 17.09.2014, I have made a detailed discussion about the pros and cons of recording of evidence through video conference and that order has not been challenged by the defence, in other words they have co-operated the proceeding in recording the statement of the victim on 06.01.2015 and also on 21.01.2015.

Moreover, Hon'ble Apex Court in **Gurnaib Singh Vs. State of Punjab, Swaran Singh Vs. State of Punjab** and also in **State of U.P. Vs. Sambu Nath Singh** has specifically observed that it has become natural trend of defence to seek unnecessary adjournments and this practice is to be stopped and the same observation has been made by the Apex court in **Criminal Appeal No. 554 of 2012 [Vinod Kumar Vs. State of Punjab]**

Considering all these and also considering the judgment, passed by this Hon'ble Supreme Court as mentioned earlier, I do not find any merit in this petition.

Hence, the petition, filed by the accused/petitioner on 18.02.2015 stands rejected.

Both the Ld. Advocates are directed to be ready for recording of statement of the witness.

Dictated & corrected by me

8th Addl. Sessions Judge
Alipore, South 24-Parganas

8th Addl. Sessions Judge
Alipore, South 24-Parganas

LATER

At this stage Ld. Advocate of defence filed a petition stating that the accused is very much eager to move-before the Hon'ble High Court, challenging the order dated 18.02.2015, passed by this court and he prays for 15 days time.

Ld. P.P. IN-charge left the matter to the discretion of the court.

Heard both sides. Perused the petition. It is fact that this court received a letter from Alipore Bar Association that they will not participate in court proceeding after 12:30 p.m. on 18.02.2015. However, this case was specially fixed at 2:00 p.m. as because it would be 8:00 a.m. in Ireland, from where the statement of the victim is to be recorded. Moreover, arrangement has been made by the prosecution, fitting the apparatus for recording the statement of the witness through video conference. But, still then as the

accused is eager to move before the Hon'ble High Court, challenging the order passed by this court, today, I think minimum time be given to the Ld. Defence for bringing appropriate order from upper forum. Hence, the evidence of PW-5/victim is adjourned today.

To 09.03.2015, 10.03.2015 and 11.03.2015 for evidence of PW-5/victim. Ld. Advocate of the Defence is directed to bring appropriate order of the Hon'ble High Court, in the mean time.

Accused is remanded to J.C. till date and he is also directed to be produced on the date fixed.

Let a copy of the order be given to the Ld. Defence Counsel at once, if prayed for.

Let a copy of the order be communicated to the witness through Embassy of India in Ireland.

Dictated & corrected by me

8th Addl. Sessions Judge
Alipore, South 24-Parganas

8th Addl. Sessions Judge
Alipore, South 24-Parganas

//TRUE & TYPED COPY//