

IN THE COURT OF ADDL. DIST. & SESSIONS JUDGE-VI, BHAGALPUR-CUM-SPECIAL
JUDGE POCSO ACT
POCSO CASE No. 10/2020
(Arising out of Kotwali (Barari) P.S. Case No. 278/2018)

In the matter of:

**Ajay Kumar @ Ajay Mandal, S/o Late Fuso Mandal
R/o Village Jichho, P.S Lodipur,
District Bhagalpur**

.....Petitioner

VERSUS

The State of Bihar

.....Opposite Party

Appearance:

For the Petitioner : Sri Anand Kumar Srivastva, learned Advocate

For the State : Sri Shankar Jaikishan Mandal, Spl.P.P

Order

27.10.2021 By this order I shall decide an application dated 26.2.2020 filed on behalf of the petitioner namely **Ajay Kumar @ Ajay Mandal**.

The learned counsel for the petitioner submitted that the aforesaid accused is facing trial in this Court because charge has been framed against the accused on 26.3.2019, under section 376/366A of IPC and section 4 of the POCSO Act. He has further submitted that initially the FIR has been instituted only under section 366/376 of IPC against the petitioner but at the time of framing of charge this Court has framed charge against the accused-petitioner under section 4 of the POCSO Act also in addition to section 376/366A of IPC on the basis of age of the victim girl which has been shown by the Medical Officer as 16-18 years. He has further submitted that the age of the victim girl in her school leaving certificate, mark sheet and provisional certificate, issued by Bihar School Examination Board, Patna is 25.12.1998. According to which the victim was aged about 19 years and six months at the time of alleged occurrence. Further, the Investigating Officer has also disclosed the age of the victim girl to be of 19 years and the learned Judicial Magistrate who recorded the statement of the victim under section 164 Cr.P.C. has also assessed the age of the victim girl to be of 18 years. But the charge was framed under section 4 of the POCSO Act also in addition to the section

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366A/376 of IPC, which is not proper. He further submits that being aggrieved by the framing of charge in section 4 of the POCSO Act, the petitioner filed a quashing petition before the Hon'ble Patna High Court vide Cr. Misc. No. 84374/2019 which was dismissed by the Hon'ble Court with observation by his order dated 19.12.2019 that "the petitioner will have is remedies by placing these materials at the appropriate stage for consideration by the Court below which shall be considered without prejudiced by the order of dismissal of this application". In compliance of the order of the Hon'ble Court and also the facts stated above this petition has been filed by the petitioner with a prayer to delete the section 4 of the POCSO Act from the column of the charge head and proceed the case in accordance with law. The learned counsel on behalf of accused-petitioner has also filed the Original documents of school leaving certificate of victim, mark sheet and provisional certificate of the victim issued by Bihar School Examination Board, Patna.

On the other hand, the learned Spl.P.P has conceded to the submissions on behalf of the accused-petitioner that as per the school leaving certificate, mark sheet and provisional certificate of victim issued by Bihar School Examination Board, Patna the date of the birth of the victim is 25.12.1998. According to which the victim was major at the time of offence i.e. 12.3.2018 and charge under POCSO Act has been framed inadvertently and wrongly.

It is well settled principle that in the assessment of age of the victim process of age determination is same as provided in section 94 of the J.J Act. According to which for determination of age of the victim following factors shall be considered in priority as mentioned below by seeking evidence by obtaining- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in

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the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (I) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

In light of aforesaid settled principle by Hon'ble Apex Court the age of the victim in this case as per school leaving certificate, mark sheet and provisional certificate is 19 years and 6 months at the time of occurrence. So, provision of POCSO Act should not attract against the accused and only charge under section 366A/376 of IPC should be framed against the accused-petitioner. Since for the trial of case under section 376 of IPC learned Court of ADJ-1 Bhagalpur is the special designated competent Court. So, continuance of trial of the accused-petitioner before this Exclusive Special Court of POCSO Act is not proper. So accordingly, entire case record of POCSO Case No. 10/2020 is sent to the **Court of learned Court of ADJ-1 Bhagalpur for further proceedings**. Accused-petitioner is directed to appear before the learned court of ADJ-1 Bhagalpur on 3.11.2021 for further proceedings.

Sd/-
(Anand Kumar Singh-I)
Exclusive Special Judge POCSO Act
Cum-ADJ-VI, Bhagalpur
Dated: 27.10.2021