

**IN THE COURT OF THE Addl. SESSIONS JUDGE CUM
SPECIAL JUDGE, POCSO, DHUBRI
Present: Smt. Poli Kataki, A.J.S.
Addl. Sessions Judge cum Special Judge, POCSO, Dhubri
Special Case No. 344 of 2022
Golakganj PS Case No. 51 of 2021
Under Section 376-AB of IPC, r/w Section 6
POCSO Act, 2012**

ORDER

01.12.2022, Shri Uttam Kumar Sarkar, learned Special P.P. Dhubri is present.

The IO has filed Offence Report No. 378/ of 2021 against CCL Nitish Sarkar.

The brief facts of the case is that the Complainant lodged an Ejahar on 18.01.2021 before the I/C Halakura Police Outpost alleging inter-alia that on 13.01.2021 at about 4.00 pm, the CCL Nitish Sarkar took his son/Victim[X], aged 5 years to the bank of Gangadhar River and sexually assaulted the Victim[X] by putting his penis in the mouth of the Victim [X]. On the basis of the said ejahar, Golakganj P.S. case No. 51 /21, u/s 377/511/294/506/34 of IPC, r/w Section 4 POCSO Act, 2012 was registered and taken up for investigation.

During the course of investigation, the IO of the case had apprehended Nitish Sarkar and in the apprehend memo, his age was mentioned as 16 years. The CCL was

produced before the JJB, Dhubri alongwith forwarding report, inspection memo, apprehension memo, notice, copy of birth certificate and COVID -19 antigen test. Vide order dated 21.10.2021, the Learned Principle Magistrate, JJB, Dhubri released Nitish Sarkar to the zimma of his mother.

After completion of investigation, the IO has filed Offence Report No. 378/ of 2021 against CCL Nitish Sarkar under Section 376 AB of IPC, r/w Section 6 POCSO Act, 2012.

I have gone through the Offence report including the case record of the instant case. From order dated 21.10.2021 it is seen that the Learned Principle Magistrate, JJB, Dhubri has inter-alia observed that from the copy of the registration card issued by the Board of Secondary Education, Assam, it is seen that the date of birth of the juvenile is on 06.01.2005, which means the age of juvenile as on the date of occurrence was 16 years and 7 days. So it clearly appears that Nitish Chandra Sarkar is a CCL.

In the instant case, the incident took place on 13.01.2021 and date of birth of the CCL is 06.01.2005 i.e. on the date of incident the age of Nitish Sarkar was less than 18 years. Thus, on the date of incident his age was below 18 years and he is the juvenile and being so the provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 is applicable to Nitish Sarkar.

Further, Section 34(1) of the POCSO Act, 2012, which provides for procedure in case of commission of offence by child and determination of age by Special Court which is as follows:-

“ Where any offence under this Act is committed by a child, such child shall be dealt with under the provision of the Juvenile Justice (Care and protection of Children) Act, 2000”.

Under Section 15 of the Act, in case of a heinous offence alleged to have been committed by the child who has completed or above the age of 16 years the Board is required to carry a preliminary assessment with regard to his mental and physical capacity to commit such offence and thereafter send a preliminary report to the Children Court. It is only after receipt of preliminary assessment report from the Board under section 15 of the Act, the Children Court may decide that there is a need for trial of the child as an adult as per the provision of the Cr P C and prior to that the Children Court does not have any jurisdiction to deal with any matter pertaining to a child in conflict with law.

In view of the above provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 and POCSO Act, 2012, only the Juvenile Justice Board has jurisdiction to deal with any person who is apparently a child alleged to be in conflict with law.

Transmit the relevant copies of the record of Golakganj P.S. case No. 51/2021 and the Offence Report No. 378/ of 2021 along with this order to the Juvenile Justice Board, Dhubri for disposal the matter in accordance with the Provision of law.

Inform accordingly.

[P. Kataki]
Addl. Sessions Judge cum
Special Judge, POCSO, Dhubri