

Order No. 06
Dated 30.11.22

Ld counsel for the accused / petitioner, Mr. Manik Biswas and the ld Spl P.P. in charge Mr. Amiya Chakraborty for the State are present.

Today is fixed for hearing bail application dated 17.11.22.

One bail application is also filed today on behalf of the accused Sanjoy Bauri which appears to be redundant as the earlier bail application is still pending for hearing. However, both the applications are taken up for hearing in presence of both sides.

Accused Sanjoy Bauri is produced from j/C through VC.

Ld Counsel appearing for the accused submits that in the FIR it is mentioned that on 31.10.22, the survivor was enticed away by the accused between 2.00 PM – 02.30 PM and after sunset, she returned home with tears in her eyes. He contended that the FIR does not speak about keeping or confining the survivor child in the house of the accused for two days but the prosecution introduced a new story after the FIR was lodged. Further, he contended that the survivor refused to undergo medico-legal examination as there was no such incident of sexual assault. So, emphasizing on the ground of false implication, ld counsel prays for bail on any stringent conditions as this court may deem fit and proper.

Ld Spl P.P. in charge vehemently opposes the prayer for bail on the ground that the date of birth of the survivor is 20.04.2007 meaning, she was a child within the meaning of section 2(d) of the POCSO Act. Further, inviting my attention of the statements of the witnesses recorded u/s 161 Cr.PC, ld Spl P.P. in charge contended that there are overwhelming materials in the CD indicating that the accused established physical relation with the child and the facts and circumstances of the case attracts the offence u/s 6 of the POCSO Act.

Having heard both sides at length and having perused the materials in CD, I find that the fact of the age of the survivor has been duly verified with the School Admission Register and there is no ambiguity that the date of birth is 20.04.2007 which means, the survivor is of 15 years plus age. The statement of the survivor recorded u/s 164 Cr.PC although indicates that she had a romantic relationship with the accused but he put vermilion on her head and thereafter, took her to his house and police recovered the survivor after two days from his house. Whatever may be the statement of the survivor before the ld Magistrate, the circumstances indicate prima facie that there was penetrative offence committed by the accused upon the survivor child.

Given the facts and circumstances of this case, this court finds no point at this bail stage in the submission of the Id counsel for the accused that the survivor did not give her consent to medical examination. It is absolutely clear, as of now, that any kind of sexual relation, be it consensual or otherwise, if committed by an adult upon a child would prima facie attract the offence of the Protection of Children from Sexual Offences Act, 2012. Therefore, considering the nascent stage of investigation, the prayer for bail stands rejected.

Return CD.

Fix 13.12.22 for IO's report.

Dictated & Corrected

Judge, POCSO Court, Bankura

Judge, POCSO Court, Bankura