POCSO Case No. 34 of 2024

Present :- Sri Deepto Ghosh, Judge POCSO Court -Cum-
Addl. Dist. & Sess. Judge, 2nd Court, Cooch Behar.

Order No. 04, dt. 11.07.2024 :-

Today is fixed for production, hearing of bail petition and IO's report.

Accused Jamidul Islam is produced from J/C.

Notice is served to the Defacto complainant & Victim Girl.

VG is present who has recorded her no objection to the prayer of bail of accused.

Heard the Ld. Advocates. Considered.

Ld. Advocate for the defence submitted that VG is the married wife of the accused and in the wedlock which is perfectly legal as per personal law of the accused and the VG a child was born and when the child was admitted at the local hospital, at the instance of the doctor the matter of child marriage and teenage pregnancy was brought to the attention of the police administration and the case was filed and as such Court must in this regard take credence of the situation and grant bail to the accused accordingly, taking liberal approach. Ld. Counsel also submitted no bail application u/s 439 of CrPC or u/s 483 BNSS has been filed before the Superior Court or Hon'ble Court. Ld. Counsel also relied upon authority of the Hon'ble High Court, Calcutta Division Bench reported in **2024(2) AICLR 881 (CAL)** to bring home the point that court is supposed to take a humane view of the matter to do complete justice.

Heard Ld counsel for the prosecution who produce the CD and had a feeble opposition and left the matter to the discretion of the Court.

Perused the case record, CD and materials on record.

The VG was a 14 years old minor. The VG has been medically examined. In her statement the victim girl disclosed that she married the accused after eloping with him and got married in a mosque and she does not have any proof of marriage, but returned back to home after eight months of pregnancy.

Be that as it may, at present the petition filed at the instance of the defacto complainant suo motu suggests that VG has tried to give a wide-berth to the accusation, she has no objection if the accused is granted bail.

Now, what would have been the situation had the VG legally married the accused and the same has been answered by the Hon'ble Apex Court in no uncertain terms in Independent Thought Vs Union of India reported in **AIR 2017 SC 4904** wherein sexual intercourse by a man with his own wife below 18 years of age is also considered rape.

Under this circumstances, even if any compromise reached between the parties to secure bail of the accused, and that too by the VG or her family member is against the spirit of the observation of the Hon'ble Apex Court in State of MP Vs Madan Lal as decided by the Hon'ble Apex Court on 01.12.2015 in Criminal Appeal No. 231 of 2015, where it has been categorically stated that in a case of rape or attempt of rape the conception of compromise under no circumstances can really be thought of (Paragraph-16).

The authority of the Calcutta High Court at the instance of Defence is when the Hon'ble Court exercised its inherent jurisdiction u/s 482 of CrPC coupled with plenary power under article 226 of the Constitution, setting aside the conviction of the appellant

and as such same is not applicable for this Statute Court. Moreover, the observation of the Hon'ble Court in the said Authority is under challenge in – In Re : Right to Privacy of Adolescent – Suo Motu Writ Petition (C) No. 3 of 2023 as reported in **2023 SCC Online SC 1877** and the same is silent on the observation of the Hon'ble Apex Court in Independent Thought (supra).

It is a settle law requires no further emphasis that when there is any conflict between secular and personal law provisions, the secular one will prevailed (reference decision of Hon'ble Apex Court in **Criminal Appeal No. 2842 of 2024 – MD Abdul Samad Vs. State of Telengana dated 10-07.2024**).

Here, however the VG now decided not to oppose the bail of the accused. Investigation is still going on. On perusal of the case record, CD as well as statement of the victim girl recorded u/s 164 of CrPC it appears that the VG is minor at the time of her marriage, since in the wedlock child has already born, the same may find the accused prima facie on the wrong side of the law even if, the VG is his married wife. Be that as it may, at this initial stage this court is not inclined to grant bail to the principal accused Jamidul Islam and as such the prayer for bail of accused Jamidul Islam is rejected.

Fix 25.07.2024 for production and IO's report.

CD be produced on the date fixed.

Dictated & Corrected,

Judge POCSO Court-Cum-
Addl. Sess. Judge, 2nd Court
Cooch Behar,

Judge POCSO -Court-Cum-
Addl. Sess. Judge, 2nd Court
Cooch Behar,
JO Code No. WB 00841