

POCSO Case No-61 of 2018

(Ref:- Lalgola PS case no 705/18 dt. 25/10/18)

Order No-07 Dt 06.12.2018.

Today is fixed for production of the accused persons , further hearing & order in respect of ptn dt 12,11.18 & 22.11.18 .

Ld advocates on behalf of the accused persons and the Ld Spl PP on behalf of the State are present.

Heard both side. Considered.

It appears from the case record that two applications dated 12,11.18 & 22.11.18 along with documents were filed on behalf of the accused persons viz. Mainuddin Sk @ Raj & Evan Sk respectively claiming that they were minor at the time of alleged offence in connection with this case and during hearing the Head teacher of Katakshaki Puthiya High School was summoned for the purpose of proving the authenticity of the school certificate issued by the head teacher of Katakshaki Puthiya High School and other relevant documents.

Perused the petition of the accused persons viz. Mainuddin Sk & Evan Sk, School Certificate dated 30.11.2018 ,Admit Card and the admission registrars of Katakshaki Puthiya High School marked exhibits 1 and 2 respectively, the evidence of the Head teacher Basir Ahhamed of Katakshaki Puthiya High School and the report of the concern PS from which it appears that the certificate dated 30.11.2018 & admission registrar marked exhibit 1 that the date of birth of the accused Mainuddin Sk is 12.08.2002. The alleged incident took place on 25.10.2018 which suggests that at the time of alleged incident, the accused Mainuddin Sk was aged about 15 years 04 months and 13 days.

Admission registrar marked exhibit 2 during evidence of the Head teacher Basir Ahhamed of Katakshaki Puthiya High School it is found that the date of birth of the accused Evan Sk is 25.10.2002. The alleged incident took place on 25.10.2018 which suggests that at the time of alleged incident, the accused Evan Sk was aged about 16 years .

So, certainly the accused persons viz. Mainuddin Sk & Evan Sk were less than 18 years as per school certificate & Admission registrar at the time of alleged incident.

Accordingly, the petitions dated 12,11.18 & 22.11.18 of the accused Moinuddin Sk & Ivan Sk claiming them as minor on the date of alleged incident are considered and allowed and thus the two petitions dated 12,11.18 & 22.11.18 are disposed of.

I have gone through the provision of sec 2(2), Sec 2(33), 2(20) and other relevant section of Juvenile Justice Care and Protection Act as well as the provision of Sec 3 & 4 of POCSO Act and having regard to the above, it appears to this court that there is no reason to disbelieve that the accused was juvenile at the time of the commission of the alleged offence and from the prima-facie documents in the case record it transpires that the alleged offence against the accused falls U/S Sec 3 & 4 of the POCSO Act which is heinous offence as per Provision of Sec 2(33) of Juvenile Justice Care and Protection Act as the punishment u/s 4 POCSO Act is minimum 07 years which may extend to imprisonment for life, and shall also be liable with fine, for which the accused Moinuddin Sk & Ivan Sk are required to be forwarded to the Juvenile Court for appropriate order.

Juvenile Justice Board, Baharampur, Murshidabad is directed to conduct a preliminary assessment with regard to the mental and physical capacity of the accused Moinuddin Sk @ Raj & Ivan Sk to commit such offence, ability to understand and other relevant factors with the assistance of experienced psychologists or other experts as per the provisions of sec 15 of the Juvenile Justice (Care & protection of Children) Act and to pass an appropriate order to that effect.

Let the accused persons viz. Moinuddin Sk @ Raj & Ivan Sk being found juvenile at the time of commission of offence, be produced to the Juvenile Justice Board at Baharampur, Murshidabad on 12.12.2018 for an appropriate order.

Superintendent, Correctional Home Lalbagh, Murshidabad, is directed to produce the accused persons viz. Moinuddin Sk & Ivan Sk before the Juvenile Justice Board, Baharampur, Murshidabad, on 12.12.2018 .

Copying Department is directed to prepare the brief copy of this case record and after being prepared the same, the part record be sent to the Juvenile Justice Board for appropriate action in respect of juvenile Moinuddin Sk @ Raj & Ivan Sk.

To 14.12.2018 for production of the accused persons viz. Abdul Samad @ Ripon and Samrat Sk @ Raja, hearing bail petition & for further order.

Let a copy of this order be sent to

- 1) the Juvenile Justice Board , Baharampur, Murshidabad,
- 2) the Superintendent, Correctional Home Lalbagh, Murshidabad ,
- 3) Copying deptt, directly and
- 4) the IO of this case through I/C Lalgola P.S for information and taking necessary action.

D/A to comply at once and note in the register.

Dictated & Corrected by me

Judge, Special Court,
Lalbagh, Murshidabad.

Judge, Special Court,
Lalbagh, Murshidabad