

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.862 of 2018

Himanshu @ Golu Manikpuri, aged about 29 years, S/o Shri Uttam Das Manikpuri, resident of Bus Stand Sambalpur, P.S. Bhanupratappur, District North Bastar Kanker, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, North Bastar Kanker, Chhattisgarh

--- Respondent

For Applicant	:	Shri P.K.C. Tiwari, Senior Advocate with Shri Ashutosh Trivedi, Advocate
For Respondent	:	Shri Neeraj K. Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

17.8.2018

1. Heard on admission.
2. This revision has been preferred against the order dated 18.7.2018 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the POCSO Act'), Bhanupratappur, Kanker in Special Sessions Trial No.16 of 2018, by which the Learned Special Judge has framed charges against the Applicant/accused under Sections 376, 506B, 120B of the Indian Penal Code and Section 4 of the POCSO Act.
3. As per the prosecution story, it is alleged that on 20.3.2018 at about 12:30 p.m., at the residence of co-accused Raja alias Sohail Khan, the present Applicant threatened the prosecutrix, a girl below 18 years of age, of her life and committed rape with her. On the basis of a written report made by her, police registered a crime and on completion of the investigation, a charge-sheet was filed. Vide

the impugned order, the Trial Court has framed the charges against the Applicant as mentioned in the second paragraph of this order. Hence, this revision.

4. Learned Senior Advocate appearing for the Applicant submits that the material available on record clearly establishes that the act of sexual intercourse done by the Applicant with the prosecutrix was with her consent. Since she was a consenting party to the act, no offence under Section 376 of the Indian Penal Code or under Section 4 of the POCSO Act is *prima facie* made out. He further submits that there are 4 documents relating to date of birth of the prosecutrix. According to the school admission register, her date of birth is 22.9.2000. According to the Prasav Panji (Child-Delivery Register) and the Tikakaran Panji (Vaccination Register), her date of birth is 22.1.2000. According to the ossification test report, her age was between 17 and 18 years. He further submits that entry of date of birth of the prosecutrix in the Prasav Panji and in the Tikakaran Panji was made first. Therefore, the entry of the said registers be treated to be correct and on the basis of the entry made in the said two registers, on the date of incident, i.e., 20.3.2018, the prosecutrix was more than 18 years of age and as such charge under Section 4 of the POCSO Act is *prima facie* not made out.
5. Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Applicant and submits that there is sufficient evidence of rape with the prosecutrix. He further submits that out of the 4 documents relating to date of birth of the prosecutrix, which one will be treated to be correct is a matter of

evidence. Apart from that, the prosecutrix herself, in her statements recorded under Sections 161 and 164 of the Code of Criminal Procedure, has stated her age to be 17 years. Therefore, *prima facie*, it is established that on the date of incident, she was below 18 years of age. Thus, the Trial Court has rightly framed the charges against the Applicant under Sections 376, 506B, 120B of the Indian Penal Code and Section 4 of the POCSO Act.

6. I have heard Learned Counsel appearing for the parties and perused the material available minutely.
7. Section 240 of the Code of Criminal Procedure, which deals with framing of charge, reads as follows:

“240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. A bare reading of Section 240 of the Code of Criminal Procedure reveals that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused, the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code of Criminal Procedure, which such Magistrate is competent to try and

which can be adequately punished by him, he shall frame in writing a charge against the accused.

9. It is settled law that at the stage of framing of charge, the defence of the accused cannot be put-forth.
10. In **AIR 2017 SC 796 (State of Rajasthan v. Fatehkaran Mehdu)**, it was observed by the Supreme Court that for framing of charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.
11. Applying to the aforesaid principle in this case, after going through the charge-sheet and the documents annexed thereto, it is clear that there is sufficient material available on record on the basis of which charges under Sections 376, 506B, 120B of the Indian Penal Code can be made out against the Applicant. Regarding charge under Section 4 of the POCSO Act, at this stage, which one is to be accepted out of the 4 documents relating to date of birth of the prosecutrix cannot be decided at this stage. In her both the statements under Sections 161 and 164 of the Code of Criminal Procedure, the prosecutrix has stated her age to be 17 years. Her school admission register states her date of birth to be 22.9.2000. Though the Prasav Panji and the Tikakaran Panji show that her date of birth is 22.1.2000. But, the entry of date of birth of the prosecutrix in the Prasav Panji and in the Tikakaran Panji were made on what basis, by whom and on which date are to be decided by the Trial Court. At present, there is sufficient material

available on record on the basis of which the charge under Section 4 of the POCSO Act is also *prima facie* made out.

- 12.** In the premises of aforestated, I find no merit in the revision. It is, therefore, dismissed at the admission stage itself.

Sd/-
(Arvind Singh Chandel)
Judge