

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5944 of 2018

ORDER :

The petitioner, aged about 28 years, who is the accused in Crime No.76 of 2018 of Ichoda Police Station of Adilabad District, registered for offences punishable under Section 376(2)(i)(n) IPC and Section 4 of POCSO Act. It is based on the complaint of Shaik Javeed Ahmed, who is the father of the victim minor girl, and as per the Criminal Law Amended Act, 2018, from the duty of the Court to hear the victim also, she is impleaded as party to the bail application and present with reference to the address mentioned in the First Information Report.

2. Heard learned counsel for the petitioner, victim and learned Public Prosecutor, representing the State, and perused the material on record.

3. The report of the *de facto* complainant shows on 12.04.2018, his daughter, aged about 16 years, went to market and did not return home back and the *de facto* complainant and his family members searched for the victim girl in and around including in the relatives house and in vain and subsequently she was traced on 11.05.2018 and appeared before the Investigating Officer-LW.16 and she was taken to custody and examined and recorded her statement. In the course of examination, the said victim girl stated that for the last one year with her brother the accused moved freely and they exchanged their phone

numbers and accused used to talk her frequently and told her of he loved her and he had given divorce to his first wife and expressed willingness to marry her before their parents, but the parents refused, later hatched a plan to flee away and according to their plan on 12.04.2018 at about 1.00 p.m. she left from the parents' house and met the accused at RTC bus stand, Ichoda, and both boarded the bus and proceeded to Hyderabad and they taken shelter at NR Lodge, Nampally, at Room No.301, where she stayed and accused stayed in Room No.302 and on the next day they went to Bhongir and met one Khaji-Mohammad Amanullah at Mosque, who performed their marriage and after the so-called marriage formalities, they both stayed together for 27 days at NR Lodge, Nampally, at Room No.302 and participated in the conjugal life and later they came to know about her father given report about the missing case registered by Ichoda Police, they returned to Nirmal, where accused on 11.05.2018 approached Ichoda Police Station. It is there from the offences for which the crime was registered.

4. It is the submission of the learned counsel for the petitioner in the bail application that the victim girl is not a minor and as per the Aadhar card her date of birth is 01.01.2000 and from the remand case diary of the accused arrested on 18.5.2018, 17 witnesses were already examined by the prosecution and LW.10 is the Assistant Professor, RIMS Hospital, Adilabad, who conducted medical examination and issued age determination certificate opining from physical, dental and

radiology examination of age of the victim girl is between 18 and 19 years.

5. The victim girl present before the Court says her date of birth is 01.01.2000 as mentioned in the Aadhar Card and she has completed 18 years. In fact, the prosecution material shows her Study Certificate from ZP High School, Ichoda, she was admitted way back on 16.06.2012 with admission No.9450 of 2017 in ZPHS, Ichoda. The Head Master from the school record issued the certificate showing her admitted dated of birth as 02.04.2002. She admittedly having been present before the Court, when questioned stated studied in the said Ichoda ZP High School. What she says, she studied and passed 10th class in 2014-15. The school record shows during 2012-13 she studied 6th and 7th class. Her father name is Sk Saba Siddika, who is the *de facto* complainant, that tallies. Thereby, as pointed out by learned Public Prosecutor from their doubting of the genuineness of the said opinion of LW.10 at RIMS Hospital, Adilabad, requires further medical examination of her age under Section 27 of the POCSO Act and Section 164-A Cr.P.C. Having regard to the above, leave about such 10th class pass certificate not even produced by her or by the accused, even she supports and the 1st wife of the accused statement clearly shows there was no any such consent of her for the marriage and from the school bonafide certificate tallying with the particulars of the age proof recorded while admitting in 6th class in 2012 itself of still she is 16 years and a minor, the petitioner is not

entitled to the concession of bail and deserves to be dismissed and liberty is given to the police, if at all for second examination at NIMs or any other Government Headquarters Hospital.

6. Accordingly and with the above observation, the criminal petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

13th July 2018.

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Dr. B. SIVA SANKARA RAO, J

