

506 of the Indian Penal Code, under Sections 3 (1)(w)(i)(ii) and 3(2)(va) of the Atrocities Act, under Section 7(1)(d) of the Protection of Civil Right Act, 1955 as well as under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for the sake of brevity).

2 By drawing our attention to the FIR lodged by mother of the victim female child, the learned Counsel for the appellant/accused argued that the appellant/accused is apparently falsely implicated in the crime in question due to political rivalry. He argued that the appellant/accused is a Rector in hostel run by Malshiras Shikshan Prasarak Mandal, Malshiras. Aunt of the appellant/accused is member of Nagar Panchayat, Malshiras. The FIR lodged against the appellant/accused shows that mother of the victim female child had initially contacted one Aaba Dhaije, whose wife is member of Nagar Panchayat, Malshiras. This implies that the appellant/accused is falsely implicated due to political motive. The learned Counsel further argued that statement under Section 161 of the victim female child shows that the first incident occurred one month prior to lodging the FIR. Thereafter, on 17/10/2018, as seen from the statement of the victim female child, the appellant/accused had denuded her in her own house in absence of her family members. In her first version before police, the victim female child has not disclosed penetrative sexual assault on her on 17/10/2018. The learned Counsel

further argued that mother of the victim female child, who lodged the FIR, has also not spoken about penetrative sexual assault on the victim female child on 17/10/2018. With the aid of the statements of the victim female child as well as FIR of the mother of victim female child, the learned Counsel drew our attention to the medical evidence gathered by the Investigator to point out that the Medical Officer has not found hymen of the victim female child torn. With this, it is argued that the offence punishable under Section 4 of the POCSO Act as well as under Section 376 of the Indian Penal Code is not made out from the material gathered by the Investigator. It is further argued that considering the fact that *prima facie* offence of rape or penetrative sexual assault is not reflected, the appellant/accused, who is young boy aged about 23 years working as Superintendent in the hostel needs to be released on bail imposing some conditions. It is also argued that there is delay in lodging the FIR.

3 We have also heard the learned Additional Public Prosecutor appearing for the State. He argued that the appellant/accused is politically influential person and because of that influence a *bandh* was called at Malshiras after his arrest. The learned Additional Public Prosecutor further argued that there is no need of medical evidence in such offence.

4 We also heard the learned Counsel appearing for respondent No.2/ First Informant. He opposed the appeal by

contending that considering the nature of offence, the appellant/accused is not entitled for bail.

5 We have considered the submissions so advanced and also perused the charge-sheet.

6 The victim female child was referred to the Rural Hospital of Malshiras after lodgment of the FIR and Medical Officer found that hymen of the victim female child intact. The prosecution has collected certificate of age of the victim female child. It is seen that she was born on 26/10/2005. The first incident allegedly took place one month prior to 17/10/2018. This clarifies that the victim female child was about 13 years of age when the incident in question took place. Medical jurisprudence shows that in teen aged female the hymen is situated at deep inside and it may not necessarily get ruptured in penetrative sexual assault. Section 3 of the POCSO Act defines penetrative sexual assault. Penetration of penis to any extent amounts to the penetrative sexual assault. Similarly, Section 375 of the Indian Penal Code defining the term 'rape' also makes it clear that a slightest penetration amounts to rape. In this view of the matter, at pre-trial stage, we are not persuaded to hold that no penetrative sexual assault took place on the victim female child, in the wake of her positive statements recorded by the police and Magistrate.

7 Delay in lodging the FIR cannot be used as ritualistic formula for doubting prosecution case. Statement of the victim female child itself clarifies that because of threat extended by the appellant/accused, she could not disclose the incident to her mother. Her mother has lodged the report in respect of the incident on the very next day after witnessing the incident herself after consulting her relative Aaba Dhaije, who happens to be husband of Shobha Dhaije. Said Shobha appears to be active in politics of Nagar Panchayat of Malshiras. The FIR itself shows that parents of the victim female child are earning their livelihood by doing work as labour. In such circumstances, no overbearing importance can be given to the fact that the parents of the victim female child approached Aaba Dhaije before lodging the FIR. Few hours of delay in lodging the FIR in such cases of sexual molestation of female child, at this stage, cannot be considered for doubting the prosecution case. Similarly, it is not possible to hold that the crime in question is registered due to political enmity between the prosecuting party and accused party. Ultimately, considering the nature of crime it is not possible to hold that, in Indian setting, parents of a female child will falsely implicate the appellant/accused by putting the future of their teen aged daughter at stake.

8 Considering the nature of crime and the manner in which it is committed, no case for bail is made out. The appeal is devoid of merit and the same is, therefore, dismissed.

9 Needless to mention that all observations made in this Order shall have no bearing on the trial of the case.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)