

18.11.2021
Ct No. 28
D/L 36
ab/rrc

C.R.M. 2314 of 2021
(Via Video Conference)

Re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Gazole Police Station Case No. 253 of 2020 dated 18.06.2020 under Section 6 of the Protection of Children from Sexual Offences Act.

In Re: **Sailen alias Soilen Soren**

... petitioner

Mr. Sauradeep Dutta

... for the petitioner

Ms. Faria Hossain
Ms. Sonali Das

.... for the State

The learned Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with in connection with Gazole Police Station Case No. 253 of 2020 dated 18.062020 under Section 6 of the Protection of Children from Sexual Offences Act.

Learned Advocate for the petitioner submits that the petitioner was at the age of 16+ at the time of alleged

incident and in fact, this Court directed the ossification test to be done, which revealed that the age of petitioner is 18 years in tune with the birth certificate produced by the petitioner. It is further submitted that the petitioner has already been granted an interim bail and since he has not misused any condition, the interim bail should be made confirmed.

Learned Advocate for the State opposes the prayer for bail. It is submitted that the victim girl of 7 years of age has narrated the incident not only before the doctor at the time of medical examination but also before the Magistrate while recording her statement under Section 164 of the Code of Criminal Procedure. It is, thus, submitted that a heinous crime has been committed by the petitioner and, therefore, he is to be tried as an adult.

After hearing the respective submissions, it appears that at the time of moving the instant application, this Court granted an interim bail to the petitioner obviously upon a confusion having surfaced pertaining to the age of the petitioner. This Court directed the ossification test to be conducted to ascertain the age and the report would reveal that he is more than 18 years of age. There is no fetter on the part of the Court to treat the petitioner as an adult if the heinous crime is committed and the accused is mentally aware of the consequences and the effect of a commission of an offence. The girl of 7 years of age has been subjected to a sexual assault constituting an offence

under Section 6 of the Protection of Children from Sexual Offences Act. The medical examination report annexed to the case diary revealed the sexual assault having committed upon her and it is beyond cavil of doubt that such child would carry a daunting memories throughout her life. The restorative justice is also incorporated in the Juvenile Justice Act so that the child may not carry such horrified memories in future as it has an impact on her growth. The timely justice within the timeline framed therein is a paramount duty of the Court to impart justice to such child. There is nothing on record which would show that the mental growth of the petitioner has not reached the state of consciousness while committing an offence and, therefore, we do not feel that the petitioner should be shown any lenient decision even if he has been granted an interim bail, as there is no fetter on the part of the Court to take a decision after further materials are placed in terms of the said order.

Since the petitioner was grown enough and understand not only the consequence of such offence but the offence itself, we, therefore, reject the application for bail.

The concerned officer is directed to immediately take the petitioner in custody as the order granting interim bail has merged with the final order of rejection.

The bail bond furnished for the interim order stands cancelled.

The application for bail being **CRM 2314 of 2021** is
dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)