

18.07.2022
Sl. No.13
akd/PA
[Rejected]

C. R. M. (DB) 2010 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 14.06.2022 in connection with Manikchak Police Station Case No. 201 of 2021 dated 05.06.2021 later renumbered as CBI/SCB/Kolkata RC0562021S0038 under Section 6 of the POCSO Act (charge sheet submitted under Section 376AB of the Indian Penal Code read with Section 6 of the POCSO Act read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

And

In Re: ***Rafiqul Islam @ Bhelu***

... .. Petitioner

Mr. Jayanta Narayan Chatterjee
Ms. Nandini Chatterjee
Mr. Nazir Ahmed
Ms. Jayashree Patra
Ms. Sreeparna Ghosh
Mr. Suvrodeep Koley
Ms. Dipanwita Das

... .. for the petitioner

Mr. Kallol Mondal

... .. for the CBI

It is submitted on behalf of the petitioner that he is in custody for about 395 days. It is further submitted petitioner has been falsely implicated in the instant case. It is also submitted in view of addition of Section 32(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*hereinafter referred to as 'Act of 1989'*) the special court constituted under the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as 'POCSO Act'*) is not competent to try the case.

Learned advocate appearing for the Central Bureau of Investigation opposes the prayer for bail. Relying on ***Pramod Yadav vs. State of M.P. & Ors.***¹, he submits POCSO Act being a latter enactment would prevail over the earlier enactment, namely, Act of 1989. He also

¹ 2021 SCC OnLine MP 3394

submits there are ample materials implicating the petitioner in the offence of penetrative sexual assault on a minor.

We have considered the materials on record. With regard to forum of trial, we find much force in the submission of learned advocate for the Central Bureau of Investigation.

Section 14 of the Act of 1989 (as amended upto date) provides for setting up of Exclusive Special Courts and if the number of cases recorded in the district is less, special courts for the trial of offences under the Act.

Section 14 reads as follows:-

“S.14. Special Court and Exclusive Special Court

- (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more districts: PROVIDED that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act: PROVIDED FURTHER that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.
- (2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.
- (3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing: PROVIDED that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge-sheet.”

Section 20 of the said Act gives overriding effect to the provisions of the Act when they are inconsistent with any other law for the time being in force. Section 20 reads as follows :-

“S.20. Act to override other laws

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

POCSO Act was promulgated in 2012 i.e. after the Act of 1989. The law lays down the procedure as well as forum for trial of sexual offences against minors.

Section 28 of the POCSO Act reads as follows :-

“S.28. Designation of Special Courts. – (1) For the purpose of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act :
 Provided that if a Court of Session is notified as a children’s court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.
 (2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.
 (3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.”

Thus, the aforesaid provision provides for setting up of special courts for trial of sexual offences against minors. It states in the event children’s court have been set up under the Commissions for Protection of Child Rights Act, 2005 the same shall be deemed to be a special court for this purpose. It also provides offences under Section 67B of another special law viz. Information Technology Act, 2000 shall also be tried by the special court.

Sections 33 to 41 of the POCSO Act provides for a special procedure for trial of offences keeping in mind the vulnerable status of the minor victim.

The aforesaid provisions provide for examination of the vulnerable witness, that is, child in camera in a child friendly atmosphere and in presence of family member or person in confidence. Identity of the child shall not to be disclosed and she shall not be subjected to harassment by being repeatedly brought to Court or by aggressive cross-examination.

Section 42A of the POCSO Act, inter alia, envisages overriding effect of the law in case of conflict with any other law for the time being in force.

Section 42A of the POCSO Act reads as follows :-

“S.42A. Act not in derogation of any other law. – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

Both these enactments are special laws which operate in their respective fields. While Act of 1989 deals with offences against members of Scheduled Caste and Scheduled Tribe community, POCSO Act deals with sexual offences against minors. In the event, the minor is a member of the Scheduled Caste or Scheduled Tribe community, offences under both the special laws are attracted.

When two special laws overlap, it is the duty of the court to see the pith and substance of each legislature and determine which of the laws would govern the subject matter in issue.

In addition thereto, one must also bear in mind the chronology of enactment of the special laws and examine whether the latter would prevail over the former law. POCSO Act is a latter enactment and Section 42A of the Act would show that the said law would operate in addition to other laws in force and in case of any inconsistency it shall have overriding effect over the provisions of the said law to the extent of inconsistency.

As the legislative scheme under the POCSO Act provides for a forum and procedure which is specially equipped for effective and expeditious trial of sexual offences against minors and the same being a latter law having overriding effect in respect of inconsistency with other laws in force, the forum of trial envisaged therein, in our considered opinion, would prevail over the forum envisaged under the Act of 1989. In this regard, we concur with the ratio in ***Pramod Yadav*** (supra).

In view of the aforesaid discussion, we hold Special Court constituted under POCSO Act is competent to try the present case.

Coming to the merits of the case, we note statement of the victim and other materials prima facie show petitioner had subjected her to penetrative sexual assault. In view of gravity of the offence and the vulnerable status of the minor victim, we not inclined to grant bail to the petitioner at this stage.

The application for bail is thus **rejected**.

However, we direct the trial court to take prompt steps to consider the issue of framing of charge at the earliest and in the event charge is framed to conclude the trial at an early date keeping in mind the statutory mandate under Section 35(2) of the POCSO Act.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)