

09-02-2023  
Subha  
Item no.02  
Ct no.34

*IN THE HIGH COURT AT CALCUTTA*  
*Criminal Revisional Jurisdiction*  
**CRR 932 of 2021**

***Samim Gayen***  
**-versus-**  
***The State of West Bengal & Anr.***

**Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure.**

Mr. Sobhan Majumder  
Ms. Kalpita Paul  
....for the petitioner.

Mr. Madhusudan Sur, ld. APP,  
Mr. Dipankar Paramanick  
...for the State.

Report submitted by the IC of Canning PS, Baruipur Police District through Mr. Sur, learned Additional Public Prosecutor, High Court, Calcutta be kept with the record.

Mr. Majumder, learned advocate appearing for the petitioner reiterates his earlier submissions that the birth certificate of the primary school has been relied upon and the age of the victim do not satisfy the requirements of the POCSO Act. According to the learned advocate, State has based the foundation of its case on the basis of a birth certificate issued by the Panchayat Authorities, which according to the learned advocate is not acceptable in view of the ratio settled by the Hon'ble Supreme Court in the case of *Jarnail Singh -vs- State of Haryana* reported in (2013) 3 Supreme Court Cases 263. Learned advocate stressed upon the interpretation of the Hon'ble Apex Court in paragraph 22 of the said Judgement.

Mr. Sur, learned APP appearing for the State has relied upon the information furnished by the Headmistress, Janapriyo Path

Bhavan ,wherein the date of birth is reflected on 18<sup>th</sup> July, 2003. Learned advocate also relied upon another document issued by the Headmaster, Janapriya Nagar Janapriya Viadyalaya(HS) wherein the date of birth of the victim is shown as 16.03.2002.

Learned advocate for the State also produced the document of the gram panchayat which reflects that the date of birth is 18<sup>th</sup> July, 2023.

The date of issue relating to the birth of the child and the document issued by the authorities who are entitled to issue birth certificates are conflicting and to arrive at a conclusion regarding the age of the victim in a summary manner without an exhaustive evidence is not possible to be appreciated in an application under Section 482 of the Code of Criminal Procedure.

As such, the findings of the learned Trial Court relating to the age is not interfered with. Petitioner is granted liberty to produce the documents at the stage of defence evidence/witness for the purpose of rebutting the applicability of the POCSO Act.

With the aforesaid observations, the present revisional application being CRR 932 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

The Investigating Officer of the case is present in court. His further appearance before this court is dispensed with.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

**[Tirthankar Ghosh, J]**

