

08-04-2024
Subha
Item no.176
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
CRR 1429 of 2024

Bablu Mondal @ Chairuddin Mondal
-versus-
The State of West Bengal & Anr.

Mr. Manas Kumar Das
Ms. Shabana Hasin
Mr. Mobaidur Hossain
Mr. Aritra Kumar Thokdar
....for the petitioner.

Learned advocate appearing for the petitioner challenges the order dated 22-11-2023 passed by the learned special court in connection with Jalangi P. S. Case No. 313 of 2021.

Learned advocate submits that the ossification test report reflects that the age of the victim would be between 15-17 years. Learned advocate further submits that if the upper age limit is considered then the same may stretch to an age of 19 years of the victim which do not attract the provisions of the POCSO Act. The case after being registered resulted in investigation of the case being completed and chargesheet has been submitted. There must be overwhelming evidence in order to overcome the prosecution case particularly with regard to the provisions of the POCSO Act taking into account the purpose for which the same was brought into force by the legislature.

The court cannot as a matter of right only consider that there is only an upper age limit and not the lower age limit under the approximate range of age which has been arrived at by the

doctors.

Having regard to the nature of the offences complained of, the report so relied upon for assessing the age of the victim, I am of the view that it is for the special court to decide at the end of the trial and summarily the said issue cannot be decided at this stage prior to consideration of charges.

Petitioner would be at liberty to canvass all the issues in course of the trial and the learned trial court in spite of any findings of this court will be liberty to take into account and give its opinion regarding the age at the end of the trial if it is of the opinion that the provisions of the POCSO Act are applicable for convicting the present petitioner.

Needless to state that this court has not gone into the merits of the case and only give its observations restricted to the age of the victim and the contentions so advanced. The learned trial court would independently come to its opinion at the end of the trial.

With the aforesaid observations, the present revisional application being CRR 1429 of 2024 is disposed of.

Pending applications, if any, are consequently disposed of.

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]

