
(2020) 05 JH CK 0020
In the Jharkhand High Court
Case No : B.A. No. 2145 Of 2020

Md. Arif Ansari @ Aarif Ansari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-05-2020

Acts Referred:

Protection Of Children from Sexual Offences Act, 2012 — Section 6
Indian Penal Code, 1860 — Section 376
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 05 JH CK 0020

Hon'ble Judges : Ratnaker Bhengra, J

Bench : Single Bench

Advocate : Shekhar Prasad Sinha, Rakesh Ranjan

Final Decision : Dismissed

Judgement

Heard both counsels through telephonic conversation in which both the counsels Mr. Shekhar Prasad Sinha, counsel for the petitioner and Mr. Rakesh Ranjan, counsel for the State could hear each other and also I was able to conduct the hearing.

Learned counsel for the petitioner has first of all mentioned that it may be noted that there is defect pointed out regarding section 4/6 of the POCSO Act but he has said that section 6 of the POCSO Act was only added after the charge sheet so that may be ignored and accordingly the aforesaid defect is ignored. Learned counsel for the petitioner says that other offence is under section 376 of the Indian Penal Code. He has said that POCSO Act is not made out because for the POCSO Act age limit is only 16 years. He has submitted that the victim as alleged in the FIR is above 16 years of age . Further he has indicated via Aadhar Card that her date of birth is 07.05.2000, further as per the ration card she would be about 19 years. Moreover, counsel has said that as per the medical report the age of the victim is 17-18 years. Counsel further says that on this many aforesaid basis the POCSO offence cannot at all be made out against the

petitioner. Counsel has, otherwise, also argued that she is , any way, a consenting party and therefore being an adult consenting party no offence can be made out. He has further argued that the allegation in the FIR is different from what the victim has stated in her statement under section 164 of the Cr.P.C. which is annexed as Annexure-3. He says that in the FIR, there is promise to marry but under section 164 Cr.P.C. there is allegation of forcible sex and taking photograph for blackmailing which indicates that there is no reference of promise to marry in the statement under section 164 Cr. P.C. Counsel further submitted that, that apart the petitioner is languishing in jail custody from 30.10.2019, so he has already spent reasonable period in custody, therefore, he may be granted bail.

Learned counsel for the State, learned APP on the other hand has argued that in the statement under section 164 of the Cr.P.C., it is stated by the girl that she was called by phone and threatened that if she did not come then he will make photo viral of her and on that basis of fear of the photo becoming viral she has gone to the Scorpio where inside the vehicle she was forcibly made to have sex with the accused or the petitioner. Learned APP says that the offence of rape is totally made out as per her statement under section 164 Cr. P.C. He has further stated that in the report of the Officer-in-Charge it has come that she is below 18 years of age.

Having heard counsels for both the side; having gone through the records of the case and in the facts and circumstances of the case, at this stage, I am not inclined to enlarge the petitioner on bail. Accordingly, the bail application of the petitioner is rejected. He may renew his prayer for bail after sometime.