

Criminal Appeal No. 12478 of 2023

Nadia Sultana

... Appellant

-Versus-

The State and another

... Respondents

Mr. Ashok Kumar Banik, Advocate

...For the appellant

Mr. Md. Sarwar Hossain Bappi, DAG with

Ms. Moududa Begum (Fancy),

Mr. Mohammad Selim and

Mr. Mirza Mohammed Soyeb Muhit, AAGs

.....For the State

Heard and Judgment on: 06.03.2024

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Khandaker Diliruzzaman

Khandaker Diliruzzaman, J.

Supplementary affidavit do form part of the main application.

This appeal under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended 2003) is directed against the order No. 16 dated 21.11.2023 passed by the learned Judge (District and Sessions Judge), Nari-O-Shishu Nirjatan Daman Tribunal, Feni in Complaint Case No.182 of 2023 under sections 7/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended 2003), now pending in the Nari-O-Shishu Nirjatan Daman Tribunal, Feni

rejecting the application for releasing the appellant victim from the safe custody.

The facts, relevant for disposal of the appeal, are that the complainant-opposite party No.2 (who is the mother of the appellant-victim) filed a petition of complaint before the Nari-O-Shishu Nirjatan Daman Tribunal, Feni alleging inter alia that her daughter victim Nadia Sultana was an SSC examinee of 2023 of Anaondapur High School of Fulgazi Upazila under Feni District. On several times, the accused No.1 proposed love affairs to the appellant and threatened her not to disclose the same to any other persons. On the date of occurrence, the accused persons forcibly took her by a Microbus and kept her at an unknown place. Thereafter, the complainant, upon getting no trace of the victim-appellant, filed the instant case on 17.07.023.

Thereafter, the case was sent to Fulgazi Police Station for Inquiry. Sub-Inspector of Feni Police Station, after inquiring into the allegation, submitted a report before the learned Nari-O-Shishu Nirjatan Daman Tribunal, Feni who did not take cognizance of the case and fixed the next date on 08.01.2024 for Enquiry Report and hearing regarding the Naraji application.

On 26.07.2023, the victim was rescued by the police and on the same date she was taken to the General Hospital, Feni for medical examination and the concerned doctor of that Hospital submitted Medical Examination Report with an opinion that “The radiological Bony age of the skeleton whose radiographed has been taken in between 19-20 yrs(nineteen to twenty) yrs.”

On 26.07.2023, the victim-appellant made statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (amended in 2003) before the Additional Chief Judicial Magistrate, Feni. Thereafter, the appellant was sent to the Mohila-O-Shishu Hefazatider Nirapad Abas, Farhadabad, Hathazari, Chattogrm.

On 21.11.2023, the victim-appellant filed an application before the Nari-O-Shishu Nirjatan Daman Tribunal, Feni for releasing her into her custody but the learned Nari-O-Shishu Nirjatan Daman Tribunal, Feni rejected the said application of the appellant vide his order No. 16, dated 21.11.2023.

Being aggrieved by and dissatisfied with the order No. 16, dated 21.11.2023, the appellant moved the instant criminal appeal before this Court.

The learned Advocate appearing for the appellant submits that as per the Birth Registration Certificate, National Identity Card, Admit Card and Registration Card of the Board of Intermediate and Secondary Education, Cumilla, the date of Birth of the appellant is 31.08.2006 i.e. the appellant has already attained majority and at the time of alleged occurrence, she was an S.S.C Examinee and she willingly got married with the accused. Therefore, the appellant was neither kidnapped nor abducted nor enticed away against her will. Moreover, the appellant petitioner is a student and she has been in safe custody since 26.07.2023 and no cognizance of the offence has been taken yet, it is uncertain as to when the case will be ready for hearing and as such, the judicial custody of the appellant is illegal and as such, the order dated 21.11.2023 is liable to be set aside. On these grounds, the learned Advocate prays for releasing the appellant on her own custody.

The learned Deputy Attorney General opposes the prayer for releasing the appellant on her own custody.

We have heard the learned Advocate for the appellant, and the learned Deputy Attorney General.

Admittedly, the appellant was an S.S.C. examinee at the time of alleged occurrence. It appears from the Annexure-F series

that as per the Birth Registration Certificate, National Identity Card, Admit Card and Registration Card of the Board of Intermediate and Secondary Education, Cumilla, the date of Birth of the appellant is 31.08.2006 i.e. the appellant has already attained majority. Moreover, the Medical Examination Report of the appellant prepared by the doctor on 26.07.2023, wherein the concerned doctor opined that the radiological age of the victim is about 19-20 years.

Considering the above facts, we are inclined to release the appellant from the safe custody.

In the result, the appeal is allowed.

The authority of Mohila-O-Shishu Hefazatider Nirapad Abas, Farhadabad, Hathazari, Chattogram is hereby directed to set the appellant at liberty in her custody.

Office is directed to send a copy of this judgment and order to the concerned Court below immediately.

Zafar Ahmed, J.

I agree.