## ORDER

## Special (P) Case No.25/18

02/05/19

Accused appeared before the court. Engaged his counsel filed Vakalatnama and by filing petition bearing No. 624/19 prays for granting bail in his favour on the ground that he is a minor below 18 years of age and vide order dated 01/09/18 he was granted pre arrest bail by this court earlier with a direction to appear before the I/O and thereafter I/O shall conduct a medical test to determine the age of the accused and accordingly as per order of the court the accused appeared before the I/O but he is totally ignorant what the I/O has did and why the I/O submitted charge sheet showing him absconder.

I have heard learned counsel for both sides. The learned counsel Asim Chamuah appearing for the accused submitted that the accused Nayan is a juvenile in conflict with law and he filed a petition u/s- 34 of the POCSO Act to declare him as juvenile and as per order dated 01/09/18 passed in Crl Misc Case No. 133/18 accused Nayan appeared before the I/O but in spite of that I/O has submitted charge sheet against the accused showing accused Nayan as absconder. I have scrutinized the C/D, case record and petition filed by the counsel bearing No. 624/19 and 625/19. In this case the I/O prepared C/S on 31/07/18 which was submitted before the court on 12/09/18 and the order that is summited by the accused along with the bail petition is dated 01/09/18. CD clearly shown that the order dated 01/09/18 is passed after preparation of the CS by the I/O.

The case clearly reflected that the I/O charge sheeted the case on 31/07/18 and it took almost 43 days to submit the C/S before the court. That should not be taken place and because of this fact the subsequent fact that have arose vide order dated 01/09/18 has not been reflected in the record. The I/O of this case and the O/Cs of all the PS will transmit the F/F of the case immediately before the court soon the I/O prepared the F/F of the case.

Sent copy of order to the SP, Nalbari for information and to give direction to the I/Os to forward the F/F to the court

without any further delay to avoid complicacy in the case that it appears in the present case.

Learned special PP submitted that without making an inquiry it is unjust to declare the accused Nayan Das as juvenile based on his petition vide No. 625/19 u/s- 34 of the POCSO Act.

Learned defence counsel on the bail petition bearing No. 624/19 submitted that as the accused has prepared petition u/s-34 of the POCSO Act, his prayer of bail filed in petition bearing No. 624/19 may be considered. After hearing counsels for both sides and going through the petition bearing No. 625/19 u/s- 34 of the POCSO Act. I deem it fit to initiate an inquiry. Accordingly, register petition bearing No. 625/19 as a Misc Case. Issue notice to the Joint Director of Health Services, Nalbari to produce the documents relating to birth certificate issued by them on 11/07/18 in the name of accused Nayan Das, S/o- Brahmananda Das.

After perusal of petition bearing No. 624/19 filed u/s- 437 CrPC and perusal of CD and record of Crl Misc Case No. 133/18 and in view of the petition bearing No. 625/19 u/s- 34 POCSO Act and as accused Nayan Das appeared before this court on receipt of summon he is allowed to go on bail of RS. 30,000/-with two suitable sureties of like amount with conditions that i) Accused shall appear before the court on each and every date with his bailor ii) Accused shall not leave the jurisdiction of this court without prior permission from the court. iii) Accused shall not make any default on any single date. Any violation of the conditions would amounted to cancellation of the bail automatically.

Prepare copy and trial of this case will be started after disposal of petition u/s- 34 of the POCSO Act. Attached Crl Misc Case No. 133/18 & 102/18 with the Misc Case to be registered on the petition bearing No. 625/19.

Fix: 14/05/19 for copy and appearance.

Special Judge Nalbari