

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36137 of 2015

Arising Out of PS.Case No. -103 Year- 2015 Thana -MANIGACHI District- DARBHANGA

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Md. Nazir ansari @ Md. Nazir, Son of Md. Mokhir Ansari @ Md. Mofir Ansari, Resident of Village – Ijarahta, P.S. – Manigachhi, District – Darbhanga.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ajay Kumar, Advocate.

For the Opposite Party : Smt. Madhuri Lata(App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 22-12-2015 Heard both sides.

The petitioner apprehends his arrest in a case registered for the offences punishable under Section 376(n) and other Sections of the Indian Penal Code and under Sections 4, 8 and 12 of the POCSO Act.

The victim made very specific allegation that the petitioner repeatedly committed rape with her, but later on refused to marry with her.

Learned counsel for the petitioner submits that the victim made contradictory statement. There is no sign of rape. The victim is a muslim girl and according to muslim law the girl attains the majority at the age of 14 and, therefore, it shall be deemed she has given her consent out of her freewill. It is further submitted that the High Court of Patna in a judgment held that the

major girl gives consent for physical relation on assurance of marriage, no offence under Section 376 of the Indian Penal Code is made out rather an offence under Section 417 of the Indian Penal Code is made out.

From perusal of the records it appears that the girl is a minor one between 15 to 16 years. Indian Penal Code does not provide any exception for muslim girl for her attaining majority. Even a muslim girl below eighteen years shall be minor and consent of a minor on any enticement or allurement for marriage is no consent. The minor victim has made very specific allegation of rape by the petitioner. Considering the facts aforesaid, I am not inclined to enlarge the petitioner above named on anticipatory bail. Accordingly, the same is rejected.

(Prabhat Kumar Jha, J.)

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