

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23898 of 2015

Arising Out of PS.Case No. -179 Year- 2014 Thana -PANDARAK District- PATNA

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Jaya Kumari @ Jaya Bharti through her husband Raughan
Kumar Son of Charitar Singh resident of village - Dhibar, P.S.
Pandarak, District - Patna

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate
Mr. Nilesh Kumar, Advocate

For the Opposite Party : Mr. Smt. Indu Bala Panday (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL ORDER

2 25-05-2015 By this application, the order passed by the

Criminal Court, refusing to release the petitioner, has been

challenged.

Having heard Sri Ajay Kumar Thakur, learned
counsel in support of the application, I am of the view that
though the order of the Criminal Court is legally not
correct still the petitioner cannot be released at present.

It is alleged that a case has been instituted by
father of the petitioner with regard to kidnapping of the
petitioner. The petitioner is a school going student. As per
the matriculation certificate, she is still a minor. Upon her
recovery, she was produced before the Magistrate for



recording her statement under Section 164 of the Code of Criminal Procedure where the Magistrate noted her age to be about 16 years though, she professed her age to be 20 years. The Magistrate, considering her to be a minor, sent her to Nari Niketan, Gaighat, Patna. In the meantime, a Medical Board was constituted and the medical report was also on record which suggests that her age would be between 17 to 18 years. In terms of Rule 22(5) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003, the matriculation certificate is conclusive proof of the age. That being so, notwithstanding medical report, there cannot be any dispute that petitioner is a minor.

Sri Thakur submits that in her statement under Section 164 of the Code of Criminal Procedure, she has stated that she wants to go with her husband with whom she has lawfully married. Unfortunately, in view of the provision of Hindu Marriage Act, a girl below 18 years or the boy below 21 years are prohibited from marriage. Thus, the husband cannot be said to be lawful guardian in any manner of his wife. Mr. Thakur next submits that the criminal court has found that the girl was minor and was a

victim then it should have referred the matter to the Juvenile Justice Board under the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000 as an abandoned juvenile (vagabond) and once that is done it would be the Juvenile Justice Board who would decide the fate. Here, he is correct. The criminal court ought not to have dealt with the matter and once they came to a finding that she was a juvenile, the matter had to be referred to the Juvenile Justice Board to pass appropriate orders in the matter.

Thus, the order of the criminal court, being order of the learned Sessions Judge, Patna, in Cr. Revision No. 126 of 2015 and the Additional Chief Judicial Magistrate, Barh in Pandarak P.S. Case No. 179/2014, is legally not sustainable. They are Set aside. The Additional Chief Judicial Magistrate, Barh, would be required to refer this matter to Chief Judicial Magistrate, Patna, who would then pass order in accordance with law.

This application stands disposed of.

(Navaniti Prasad Singh, J.)

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