

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28129 of 2016

Arising Out of PS.Case No. -291 Year- 2015 Thana -AURANGABAD TOWN District-
AURANGABAD

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Ramesh Prasad Keshari, s/o Bampal Prasad Keshari, r/o Dharamsala
Chowk, P.S. Aurangabad (Town), District- Aurangabad.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ashok Kumar Singh, Advocate

For the Opposite Party : Mr. Sri Ashok Kumar Singh(APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 05-09-2016 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner is aggrieved by an order dated
10.05.2016 whereby and whereunder, the learned Chief Judicial
Magistrate, Aurangabad had taken cognizance of offence
punishable under Section 370 of Indian Penal Code as well
Section 26 of the Juvenile Justice (Care and Protection of
Children) Act, 2000 relating to Aurangabad (Town) P.S. case no.
291/2015.

Submission having been made on behalf of
petitioner by challenging the order impugned is that no offence
under Section 370 of Indian Penal Code as well Section 26 of the



Juvenile Justice (Care and Protection of Children) Act, 2000 is made out. In order to substantiate said plea, it has been submitted that when petitioner has moved before this Court at an earlier occasion for anticipatory bail under Cr. Misc. no. 44728/2015 (Annexure-4), the victim was directed to be medically examined and considering the victim to be above 14 years of age, the petitioner was granted anticipatory bail. Under the law, there happens to be prohibition over employment of a minor upto the age of 14 years and that being so, no offence is found to have been committed at the end of the petitioner whereupon, petitioner would not be prosecuted.

The learned Additional Public Prosecutor opposes the prayer.

With regard to ascertaining the age of victim, the Juvenile Justice (Care and Protection of Children) Rule 12 prescribes the procedure as to how to proceed in order to ascertain the age of the victim. Therefore, asking for medical report during course of consideration of anticipatory bail should not be considered in a way that by having medical report in terms thereof, will exonerate the obligation to determine the age in accordance with law. Not being so, the petitioner would not be benefited during intermediary steps having been taken for the

purpose of granting anticipatory bail.

As such, prayer at the present stage is found non-maintainable. However, if raised subsequently, then, in that event, the learned lower court will proceed to conduct enquiry in terms of Rule 12 and will pass appropriate order on that score.

With the aforesaid observation, the instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

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