

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4600 of 2016

Arising Out of PS.Case No. -5 Year- 2015 Thana -DARIYAPUR District- SARAN

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Mithilesh Singh son of Late Kamla Singh, resident of Village- Saraiya,
Police Station- Dariyapur and District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Superintendent, Remand Home, Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary

For the Opposite Party/s : Mr. Shailendra Kumar 1 (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

03/ 15-03-2016

The present application has been filed for quashing the order dated 16.05.2015 passed by learned Judicial Magistrate, Ist Class, Saran in connection with Dariyapur P.S. Case No. 05 of 2015 whereby the prayer of the petitioner for release of his daughter has been rejected.

The prosecution case got initiated on the basis of written report of informant with accusation that his daughter, Monika Kumari, aged 17 years, has been kidnapped by the FIR named accused persons.

During investigation the juvenile returned and appeared before the learned court below. Her statement under 164 Cr.P.C. was recorded when the learned Magistrate assessed her aged about eighteen year but sent her to the Chapra Remand



Home since she refused to go to her parents' house. The juvenile further stated that she was in love with one Sudhir Kumar named accused in the FIR and she was never been kidnapped as she went in the company of Sudhir Kumar of her own. She expressed her willingness to reside and marry with Sudhir Kumar. In the Matriculation Certificate the date of birth of the victim has been entered as 16.04.1998.

The petitioner filed an application before the learned Judicial Magistrate, Ist Class, Saran for release of the juvenile but the same was rejected by the learned Magistrate vide order dated 10.02.2015. Against the said order the petitioner preferred Criminal Revision No. 51 of 2015. The learned Sessions Judge disposed of the criminal application vide order dated 28.04.2015 directing the learned Magistrate to pass order after interacting with the juvenile to know about her willingness. Consequently the learned Magistrate again got the juvenile produced in the court. The juvenile appeared but she refused to go to her parents' house and expressed threat to her life at the hands of her family. Initially Sudhir Kumar also filed a petition before learned Magistrate for the release of the juvenile in his favour which was rejected by learned Magistrate. The said Sudhir Kumar preferred Criminal Revision No. 104 of 2015 before learned



Sessions Judge but the same was subsequently withdrawn. Consequently the learned Magistrate vide order dated 16.05.2015 passed fresh order on the release of the juvenile holding that since the juvenile has admitted in her 164 Cr.P.C. statement that she has still not married with Sudhir Kumar and as per date of birth entered in Matriculation Certificate she is juvenile, hence, the parents can only be a legal guardian. Hence, rejected the application of Sudhir Kumar as not maintainable. Hence, the present quashing application. Though it appears from records that the petitioner also filed Criminal Writ No. 1280 of 2015 against the order of learned Magistrate dated 16.05.2015 but the same was disposed of by a co-ordinate Bench of this Court vide order dated 18.01.2016 on the ground of availability of alternative efficacious remedy.

This Court vide order dated 19.02.2016 directed the S.P., Saran to get the juvenile produced before this Court. Today, the S.H.O., Dariyapur P.S. is present in Court with the juvenile, Monila Kumari. She admits that she will attain majority in April, 2016 but she does not want to go to her parents' house as she perceives threat to her life at the hands of her family. She also does not dispute her date of birth i.e. 16.04.1998 entered into Matriculation Certificate. There is no dispute with regard to

genuineness of Matriculation Certificate of the victim. Hence, juvenile is going to attain majority on 15.04.2016.

Considering the submissions of learned counsel for the petitioner and learned APP, this Court is of the view that the learned Magistrate misconceived the remand order dated 28.04.2015 passed by learned Sessions Judge in Criminal Revision No. 51 of 2015. The learned Sessions Judge passed the order on the revision application of the petitioner and not of the Sudhir Kumar as Sudhir Kumar withdrew his Criminal Revision No. 104 of 2015 preferred against the order of learned Magistrate refusing to release the juvenile in his favour. But impugned order dated 16.05.2015 reflects that learned Magistrate rejected the petition of Sudhir Kumar holding that the daughter of the petitioner, as per the Matriculation Certificate, is juvenile hence, the parents can only be legal guardian.

In view of above discussion the impugned order dated 16.05.2015 passed by learned Judicial Magistrate, Ist Class, Chapra in Dariyapur P.S. Case No. 05 of 2015 is set aside.

Let the Probation Officer, Saran, submit a comparative report to the learned Magistrate within ten days of the receipt of the order about congenial atmosphere and safety of juvenile at her father's house vis-à-vis Remand Home for the

purpose of release of juvenile in her father's favour. The Probation Officer will also report about the family status and atmosphere of the house of Sudhir Kumar with whom the juvenile wants to marry and reside.

The learned Magistrate will pass an interim order of release of the juvenile till 15.04.2016 in favour of her father within one week of the receipt of report of the Probation Officer, if the Probation Officer recommends as such. In such eventuality the learned Magistrate will take separate affidavit from every member of the petitioner's family including the petitioner to the effect that they will provide adequate security and facilities to the juvenile but in case of any eventuality breaching the undertaking all the family members shall be equally liable for such breach. If such release being ordered, the learned Magistrate will give intimation to S.P., Saran who will direct the local police station to provide adequate security to the juvenile. In case of release of juvenile, the petitioner will produce the juvenile before the learned Magistrate on 16.04.2016, the day the juvenile will attain majority, allowing the learned Magistrate to pass final order on release after interacting and acknowledging the willingness of the juvenile.

Let the juvenile be reached safely to

Remand Home, Saran by S.H.O., Dariyapur P.S.

Accordingly, the application is allowed.

Let this order be communicated to S.P.,
learned Judicial Magistrate and Probation Officer, Saran forthwith.



DKS/-

(Dinesh Kumar Singh, J)

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