

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14491 of 2016

Arising Out of PS.Case No. -522 Year- 2015 Thana -RUNISAIDPUR District- SITAMARHI

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Ram Jivan Sah S/o Late Harischandra Sah, Resident of village- Manik Chowk Tola- Harsingpur, P.S.- Runni Saidpur, District- Sitamarhi

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Dr. Alok Kumar Alok, Advocate
		Mr. Virendra Kumar, Advocate
		Mr. Santosh Kumar, Advocate
For the Opposite Party/s	:	Mr. Shyam Kumar Singh (APP)
For the Informant	:	Mr. Dinesh Jha, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

3 06-05-2016 Heard learned counsel for the petitioner and the learned A.P.P. for the State along with counsel appearing on behalf of the informant.

In pursuance to the order dated 27.04.2016, petitioner Ram Jivan Sah and the victim girl, Guriya Kumari along with her father, the informant, Baijulal Sah are present in person before this Court.

By the order of the learned Chief Judicial Magistrate, Sitamarhi, under Memo No. 923 dated 11.03.2016, victim girl, Guriya Kumari has been released from the Remand Home, Kailashpuri, Sitamarhi and handed over to her parents. The father of the victim girl (the

informant) has brought her before this Court.

Petitioner apprehends his arrest in connection with Runni Saidpur P.S. Case No. 522 of 2015 registered for the offence punishable under Sections 366A/34 of the Indian Penal Code.

The prosecution case is that on 28.09.2015 at about 4:00 P.M., minor daughter Guriya Kumari was kidnapped by accused persons named in the FIR including the petitioner for the purpose of marriage.

On questioning, the victim girl, Guriya Kumari states that she had made her statement under Section 164 of the Cr.P.C. before the learned Magistrate without any fear or pressure. She states that she is ready to marry the petitioner and to go to her matrimonial house along with the petitioner after marriage.

However, learned counsel for the informant brings to my notice the genealogical table of the petitioner and the victim girl stating therein that they belong to the same lineage and as per Section 5 (iv) and (v) of the Hindu Marriage Act (hereinafter referred to as the Act) comes within the purview of prohibited relationship and are sapindas of each other. Section 3(f)(i) of the Act specifies



that sapinda relationship with reference to any person so far as father's side is concerned should be fifth generation in the line of ascent through the father and he submits that both the petitioner and the victim girl Guriya Kumari are not fifth generation in the line of ascent through father. The said clause (f)(i) of Section 3 of the Act is quoted herein below:

“Section 3(f)(i)- “sapinda relationship” with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation.”

From the genealogical table produced by the informant, which is kept on record, it appears that the victim girl, Guriya Kumari is the fifth generation in the line of ascent through the father, hence, it has been submitted by the learned counsel for the informant that such marriage should not take place. Even otherwise since the victim girl

has been assessed to be a major, the provisions of Special Marriage Act will apply as submitted by the counsel for the petitioner.

Learned counsel for the informant further submits that certificate age of the victim girl is 17 years, as is evident from her admit card and as per the medical report, her age is between 15 – 17 years, but the learned counsel for the petitioner submits that in her statement recorded under Section 164 of the Cr.P.C., her age, although recorded as 19 years, but has been assessed by the Magistrate as 18 years. Hence, she is a major.

Considering the aforesaid facts and circumstances of the case, let the petitioner above named surrender in the learned Court below on 11.05.2016 and on his so surrendering, he be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Sitamarhi in connection with Runni Saidpur P.S. Case No. 522 of 2015.

The officer-in-charge, Kailashpuri Police Station, Sitamarhi is directed to bring the victim girl, Guriya Kumari from Remand Home, Short Stay Home, Kailashpuri

along with the Incharge of the said Remand Home before the Court of C.J.M. on 11.05.2016 and thereafter if the victim girl, Guriya Kumari agrees to go with the petitioner, Ram Jivan Sah, she will be free to go with him. I have talked with Guriya Kumari individually and also with the petitioner. Both say that they are ready to live with each other and Guriya Kumari is not willing to go to her father's place.

Senior Superintendent of Police, Patna is directed to provide a lady constable along with a male constable to take the victim girl, Guriya Kumari to Remand Home, Kailashpuri, Sitamarhi immediately.

(Nilu Agrawal, J.)

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