

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.59604 of 2017

Arising Out of PS.Case No. -50 Year- 2017 Thana -BUXAR MUFFSIL District- BUXAR

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1. Dinesh Kanu, S/o Sri Moti Kanu, R/o Village- Bilriya, P.S.- Narhi,
District- Balia (Uttar Pradesh).
2. Chagan @ Chanar Sah, S/o Sri Ganpati Sah @ Sobhapati Sah, R/o
Village- Muarhaw, P.S.- Belthra, District- Balia (Uttar Pradesh).

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma, Adv

For the Opposite Party/s : Smt Pushpa Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 14-12-2017 Heard learned counsel for the petitioner as well as
learned APP.

Informant, Daroga Ram who happens to be brother of
alleged victim, Phul Kumari aged about 15 years, had filed a
written report against the petitioner, Dinesh Kanu and 2-3
unknown persons disclosing therein that on 02.02.2017, he had
come to his place and inquired about him whereupon his family
members disclosed that he is away. They said that they are going
to meet in the village. In the evening hour when he came back, his
wife had disclosed that Dinesh Kanu along with 2-3 persons had
come to meet with him. As has been disclosed by him that he had
not met with them, at that very moment, his wife also disclosed
that Phul Kumari is not present in her house for the last 1-2 hours.



Then thereafter, he has gone in search of his sister. During course thereof, he came to know that in the evening hour she has been seen going towards Golumber, then he has gone to Golumber where he got information that a girl along with 2-3 persons were seen going. Then the informant dialed to Dinesh Kanu whereupon, his mobile has been found switched off, so, he apprehended the activity of Dinesh Kanu along with 2-3 unknown persons.

Learned counsel for the petitioner has relied upon Annexure-2, statement of the victim recorded under Section 164 CrPC and on that very score, it has been submitted that the victim has shown her age to be 21 years and so she is major. Furthermore, it has also been submitted that from the order impugned it is evident that the victim was medically examined and her age has been estimated in between 19-20 years. So, again on that very score, she happens to be major. Therefore, disclosure having in the written report regarding age of the victim to be minor is found duly controverted by the victim herself as well as from the medical evidence. It has also been submitted that from the statement of the victim, it is apparent that no allegation has been attributed at her end against the petitioners, more particularly, relating to any kind of ill treatment whereupon considering the period of detention since 17.10.2017, petitioners



should be released on bail.

Learned APP opposed the prayer for bail.

Hon'ble the Apex Court in *Jarnail Singh v. State of Haryana reported in 2013 Cr.L.J. 3976*, *Mahadeo v. State of Maharashtra & Anr. reported in (2013) 14 SCC 637*, *State of Madhya Pradesh v. Anoop Singh reported in (2015) 7 SCC 773*, has held that whenever there happens to be question of identification of victim to be major or minor, an inquiry has to be conducted which should be in similar way than that of prescribed under J.J. Act relating to ascertainment of the age of juvenile in conflict with law. Because of the fact that no such exercise has been adopted by the learned lower court. So, the majority as pleaded by the learned counsel for the petitioner with regard to status of the victim could not be accepted.

That being so, I do not find any cogent reason to accede to the prayer of the petitioner relating to proper identification of the victim to be major.

Now coming to the allegation, it has been submitted on behalf of the petitioners that no offence is made out as nothing has been alleged at the end of the victim against the petitioners.

There happens to be specific disclosure in the written report that victim is a minor. She was taken away by the



petitioners on false pretext that her sister is ill and during course thereof, it has also been disclosed by the victim that they took her to orchard where they gagged her mouth and took her to a Balia and then to Haryana wherefrom she escaped. She was taken out from the lawful custody of her guardian. Consequent thereupon, prayer for bail is rejected.

(Aditya Kumar Trivedi, J)

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