

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49162 of 2016

Arising Out of PS.Case No. -408 Year- 2016 Thana -BIHTA District- PATNA

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Mukesh Kumar, S/O Suresh Rai, Resident of Village- Rajpur, P.S.- Bihta,
District- Patna.

.... Petitioner/s

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Viveka Nand Pathak, Adv.

For the Opposite Party/s : Mr. Sri Brajendra Nath Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 11-01-2017 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Informant, Dilip Kumar filed written report disclosing therein that his daughter Pooja Kumari aged about 14 years was enticed away by her co-villager Chandra Kumar on 16.06.2016 and then placed her under custody of Mukesh Kumar, the petitioner. The informant further disclosed that during course of search they became known to the fact.

From the case diary it is apparent that victim along with Mukesh Kumar were apprehended (Para-10) and then thereafter statement of victim was taken under Section 164 wherein she had shown inclination towards Mukesh Kumar stating that as she was in love consequent thereupon she married with Mukesh Kumar. She shown her as 20 years. Then thereafter, victim was subject to medical examination and her age has been estimated under 18 to 19 years having over writing. Furthermore, it is also apparent from the case diary that considering the victim major final report was submitted however, differing therefrom the learned Magistrate took cognizance whereupon the matter sailed to this stage.



The Hon'ble Apex Court, apart from different benches including myself basing upon principle laid down by the Hon'ble Apex Court, has held that age of the victim is to be ascertained in same way by which age of delinquent under juvenile justice act is being ascertained. Accordingly, the learned lower court is directed to ascertain the age of the victim and in case is victim is found major on the date of occurrence, then in that event will release the petitioner on bail otherwise will pass necessary order in accordance with law. The aforesaid exercise must be completed within three months.

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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