

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44970 of 2017

Arising Out of PS. Case No.-40 Year-2016 Thana- MAHILA P.S. District- Rohtas

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Benzeer Shahin @ Twinkal D/o Izahar Alam, R/o Mohalla- Barah Pathar, P.O.
+P.S.- Dehri, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sahil Ansari @ Tipu Son of Late Taiyab, R/o Mohalla- Idgah, P.S.- Dehri (T),
District- Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary

For the Opposite Party/s : Mr. Sri Dashrath Mehta

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 11-04-2018 The petitioner seeks cancellation of bail granted to the opposite party no. 2 in connection with Dehri (Mahila) P.S. Case No. 40 of 2016, which has been instituted by her against opposite party no. 2 for the offences under Sections 376, 420, 386, 354(C), 354(D), 506/34 of the Indian Penal Code and under Sections 4/6 of the POCSO Act, 2012.

This Court has heard the learned counsel for the parties in detail for the reason that the petitioner has claimed herself to be a minor at the time when the occurrence took place and the offence was continued for about four years.

The FIR lodged by the petitioner clearly indicates that her date of birth is 13.05.1999 and in the



year 2011 she was studying in Std. VI. That was the time when the opposite party no. 2 is said to have brought her down from a vehicle and committed rape on her. It has further been alleged that photographs of the petitioner was taken and the opposite party no. 2 later threatened of disseminating such photographs and under such threat, kept on subjecting the petitioner to constant sexual intercourse. Several instances have been detailed in the FIR.

The reason for lodging the case after four years of the first occurrence is that she became mentally upset for which she had to be treated and therefore the delay in approaching the police for lodging the case.

On such statement of the petitioner, Dehri (Mahila) P.S. Case No. 40 of 2016 has been instituted under Sections 376, 420, 386, 354(C), 354(D), 506/34 of the Indian Penal Code and under Sections 4/6 of the POCSO Act, 2012.

During the course of investigation, the investigating officer went to the school of the petitioner and found that the date of birth there was also recorded to be of the year 1999.

However during the course of investigation certain other facts came to fore. One Rakesh Kumar who was known to the petitioner and opposite party no. 2,



stated before the investigating agency that the petitioner and opposite party no. 2 moved together as friends and opposite party no. 2 always visited the house of the complainant. This fact was known to the family members of both the parties. The aforesaid witness did not know anything about kidnapping and blackmailing as has been alleged in the FIR. The aforesaid statement has been recorded in paragraph -58 of the case diary. Similar statements have been made by Tipu Khan and Pankaj Kumar whose statements have been recorded in paragraphs - 59 and 60 of the case diary. The aforesaid two witnesses also have stated that the petitioner was in association with the opposite party no. 2 and this fact was not unknown to the family members of both the sides.

The opposite party no. 2 and others, on interrogation by the police, admitted the relationship between the petitioner and opposite party no. 2 but stated that the marriage could not be effected because of some suspicion in the mind of opposite party no. 2 regarding the fidelity of the petitioner.

Considering the aforesaid aspects and materials collected during the course of investigation, the court below vide order dated 23.05.2017 directed for the release of the petitioner from jail.



Mr. Sanjay Kumar Tiwary, learned advocate for the petitioner has assailed the order on several grounds; the foremost being that the petitioner was a minor at the time of the first encounter with the opposite party no. 2. In that event, even her consent for any sexual relation would not be a consent at all and therefore the petitioner did not deserve to be granted bail. Secondly, it has been argued that the petitioner, because of her having been subjected to such sexual acts, lost her mental balance and she had to be treated in hospital. It has also been alleged that the opposite party no. 2 has been threatening the petitioner of dire consequences in case she chose to prosecute him any further.

As opposed to the aforesaid contention, Mr. Vikramdeo Singh, learned advocate appearing for the opposite party no. 2 has submitted that the court below has granted bail to the opposite party no. 2 only on being satisfied that a relationship existed between the petitioner and opposite party no. 2 and that the relationship could not culminate into marriage because of certain other considerations. It was further submitted by Mr. Singh, learned advocate for the opposite party no. 2 that the allegation of threatening the petitioner is not correct as there is no complaint whatsoever before any authority regarding such threats. He has further



submitted that lodging a case after four years of the first occurrence, itself makes the case doubtful, at least for the purposes of grant of bail while the petitioner was in custody.

Attention of this Court has also drawn to the report of the medical board which had examined the petitioner on 24.06.2016. The medical board has assessed the age of the petitioner to be 22-23 years.

From the perusal of the records, it appears that the court below has granted bail to the petitioner *prima facie* on having raised doubts about the allegation of rape in the first instance when the petitioner was a minor. The grant of bail on merits does necessarily mean that the case of the petitioner is not worth trying the accused. Once the allegations were found to be doubtful in the first instance by the court below, there was no reason for him to have withheld the grant of bail to the opposite party no. 2. Grant of bail is one thing and cancellation of the same is another. Very cogent reasons are required for cancelling the bail which has been granted on merits.

This Court does not find any reason to interfere with the order of the court below.

However, any observation made in this order shall not be read to the prejudice of the parties at the



trial as the observations are tentatively and have only
been made for the purpose of disposal of this petition.

The petition is dismissed.

(Ashutosh Kumar, J.)

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