

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50428 of 2017

Arising Out of PS. Case No.-63 Year-2017 Thana- JAMALPUR District- Munger

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Khusboo Kumari D/o Sri Lakhan Sah, R/o Sadar Bazar, Tip-Top Arya Samaj Road, Post & P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Vicky Kumar @ Michael, S/o Sitaram Sah, R/o Sadar Bazar, Tip-Top Road Arya Samaj Road, P.S.- Jamalpur, District- Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhimanyu Vatsa
For the Opposite Party/s : Mr. Sri Rana Randhir Singh

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 20-06-2018 Heard learned counsel for the petitioner, State and the informant.

The victim/petitioner seeks cancellation of bail of opposite party no. 2 which was granted to him by the learned 1st Additional District and Sessions Judge, Munger in B.A. No. 573 of 2017 in connection with Jamalpur P.S. Case No. 63 of 2017 under Section 376 of the Indian Penal Code.

The allegation in the FIR is that on the pretext of marrying the petitioner, the opposite party no. 2 kept on subjecting her to continuous sexual intercourse. From the order impugned, it appears that the court below granted bail to the petitioner on the ground that the opposite party no. 2 was found to be 19 years of age on



medical examination and there was no external injuries on the person of the petitioner, evincing any act of rape against her.

Learned counsel appearing for the petitioner however has submitted that the Matriculation certificate of the petitioner clearly demonstrates that on the day of the occurrence/lodging of the FIR, she was only 17 years and 7 months i.e. less than 18 years.

Any girl of less than 18 years is not in a position to give any consent.

That apart, considering the nature of accusation against the petitioner. this Court is of the view that he ought not to have been granted bail by the court below.

For the aforesaid reasons the order dated 04.08.2017 passed by the 1st Additional District and Sessions Judge, Munger in connection with Jamalpur P.S. Case No. 63 of 2017 is set aside.

While passing this order, this Court has also taken note of the fact that the petitioner is less than 18 years of age whereas the opposite party no. 2 is a neighbour and is 31 years of age.

The bail granted to the opposite party no. 2 is hereby cancelled.

The opposite party no. 2 is directed to surrender before the court below within a period of four



weeks from today, failing which the court below is directed to take coercive steps for apprehending the opposite party no. 2.

However the opposite party no. 2 shall have the liberty to approach the court below for bail after a reasonable period.

(Ashutosh Kumar, J)

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