

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12274 of 2018

Arising Out of PS.Case No. -1122 Year- 2017 Thana -SARAN COMPLAINT CASE District-
SARAN

- =====
1. Raj Kishore Kumar Sah, S/o Late Dharam Nath Sah,
 2. Nand Kishore Kumar Sah, S/o late Dharam Nath Sah,
 3. Sonu Kumar Rai S/o Rajendra Ray, All are R/o Village- Reriya, P.S.-
Garkha, District- Saran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar

For the Opposite Party/s : Mr. Sri Narsingh Tanti

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

02/ 28-02-2018

Heard learned counsel for the petitioners

and learned APP for the State.

The petitioners are apprehending their arrest in a protest –cum- complaint case, wherein the processes have been directed to be issued after cognizance being taken for the offences punishable under Sections 366A and 376/34 of the Indian Penal Code.

The prosecution case got initiated with the filing of Complaint Case No. 1551 of 2016 on 06.06.2016 which came to be registered as Garkha P.s. Case No. 185 of 2016 on 19.06.2016 after complaint being transferred under Section 156(3) of the Cr.P.C.



The complainant has alleged that his daughter Sarita Kumari used to talk with petitioners Raj Kishore Kumar Sah and Sonu Kumar Rai being the neighbours, hence the informant has no suspicion. On 01.09.2016 at 4.00 A.M. the informant's daughter Sarita Kumari and his wife Rambha Devi went to ease out, in the meantime, Raj Kishore Kumar Sah and Sonu Kumar Rai, the petitioners came and forcibly took the daughter of the informant on motorcycle with intention to marry her.

It is submitted by learned counsel for the petitioners that the victim though got her age recorded as 15 years in 164 Cr.P.C. statement and the court also assessed as such, but she has been found aged about 16-17 years during medical examination. The victim recovered from auto rickshaw Stand on identification of her mother. In 164 Cr.P.C. statement she has stated that she went of her parental aunt's house and she has never been kidnapped. Since her father, the informant mixed poison with her food and hence she left the house. The medical report, however, did not suggest establishment of any forceful physical relation and considering the same on conclusion of the investigation the petitioners wee not sent up for trial and subsequently final form was accepted, but the cognizance has



been taken on the basis of Protest –cum- Complaint Case No. C-1122 of 2017 arising out of Garkha P.S. Case No. 185 of 2016 wherein learned ACJM-V, Saran at Chapra vide order dated 06.09.2017 directed for issuance of processes after cognizance being taken under Sections 366A and 376/34 of the Indian Penal Code. Petitioner nos. 1 and 2 are own brothers and there is no specific accusation against petitioner no. 2.

Learned APP, however, submits that there is specific accusation against petitioner nos. 1 and 3 and the order of cognizance has been passed on the basis of materials available on record.

Considering the fact that accusation of kidnapping has not only been denied by the victim herself in her statement recorded under Section 164 Cr.P.C., but the accusation is also not corroborated by the medical opinion and the police on conclusion of the investigation has found the case as mistake of fact hence did not send up the petitioners for trial coupled with the statement made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent, let the above named petitioners be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of twelve weeks from today,



on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate 5th, Saran at Chapra in connection with Protest –cum- Complaint Case No. 1122 of 2017 arising out of Garkha P.S. Case No. 185 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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