

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10412 of 2018
Arising Out of PS. Case No.-206 Year-2017 Thana- KADWA
District- Katihar

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Putli @ Savera, daughter of Abdul Sattar @ Abul Sattar, resident of
Village-Nandiyar Pelapur, P.S.-Balua Belone, District-Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Saiyad Ashraf Hussain @ Saiyad Asraf Hussain, son of Saiyad
Amant Hussain, resident of Village-Nandiyar Pelapur, P.S.-Kadwa
(Balua Belone O.P.), District-Katihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Ziaul Quamar, Adv
For the Opposite Party/s : Mr. Sri Mustaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 05-11-2018 The petitioner seeks cancellation of bail to the O.P.

no. 2 which was granted to him by order dated 03.10.2017

passed by the learned A.D.J., Katihar in connection with

Kadwa (Balua Belone O.P.) P.S. Case No. 206 of 2017

instituted for the offences under Sections 376, 341, 323,

354(B), 504, 506, 34 of the Indian Penal Code.

It has been submitted on behalf of the petitioner



that the Court below erred in granting anticipatory bail to the petitioner despite the specific accusation against him of having put her to sexual intercourse for about a year on the pretext of marrying. When she became pregnant and demanded marriage with the O.P. No. 2, she was badly assaulted, stripped half naked and thrown outside the house. The accused persons left her only on the arrival of the local villagers.

From the order impugned, it appears that the Court below granted anticipatory bail to the O.P. No. 2 primarily on the grounds viz. that the medical report about the age of the victim/petitioner declared her to be 18 to 19 years and therefore, the allegation made by her in the F.I.R. was unsustainable. The Court also took note of the fact that the last of the sexual encounter was on 15.07.2017 but the F.I.R was lodged on 17.07.2017. The other ground which has weighed with the Court below in granting anticipatory bail to the O.P. No. 2 is that his reading of the F.I.R. made him believe that the petitioner had earlier given consent for the sexual relationship.



The learned counsel for the petitioner has submitted that both the aforesaid grounds which weighed with the Court below were incorrect/erroneous. The Court, it has been argued, was looking at the applicability of the Section 376 I.P.C read with the provisions of the POCSO Act. Even if a victim is more than 18 years of age and is subjected to sexual exploitation by misrepresenting to her, it would not constitute consent. This ground also belies the correctness of the second reason assigned by the learned Court below in granting anticipatory bail to the O.P. No. 2.

The learned counsel appearing for the O.P. No. 2, however has stated that the entire set of facts have to be seen in a holistic manner and even though the reasoning given in the order impugned may not be legally tenable but once anticipatory bail has been granted, good reasons have to be available for unsettling the same.

Apart from this principle of law, it has been submitted by the learned counsel appearing on behalf of the O.P. No. 2 that at the time of grant of bail to him, he had agreed for DNA test as according to the petitioner, because



of the sexual contact with the O.P. No. 2, she had given birth to a child. The petitioner, it has been argued was not agreeable in the first instance.

In response to the aforesaid argument made by the learned counsel for the O.P. No. 2, learned counsel for the petitioner has stated that now the petitioner is ready for any DNA test but subject to the condition that the cost be borne by O.P. No. 2 as the petitioner has been relegated to impecunious circumstances. This proposal is readily agreeable to the petitioner.

As such, learned counsel for the petitioner seeks permission to withdraw this petition in order to approach the Court below seeking permission for the DNA test of the petitioner as well as of O.P. No. 2, for which the cost shall be borne by O.P. No. 2.

Whenever such an application be filed before the Court below, the Court below shall pass an order after looking into all the circumstances and would also take into account that O.P. No. 2 had undertaken before this Court that in case an order is passed for DNA test, the cost of the



same shall be borne by the O.P. No. 2.

With the aforesaid observation, the petition is
permitted to be withdrawn.

(Ashutosh Kumar, J)

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