

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38040 of 2018

Arising Out of PS. Case No.-220 Year-2017 Thana- JANKINAGAR District- Purnia

Md. Afgan @ Hafiz Md. Afgan, S/o Md. Afaque @ Md. Asfaque, R/o Vill.-
Naya Bhargama, Ward No. 8, P.S.- Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kulsum Khatun, W/o Md. Afgan @ Hafiz Md. Afgan, R/o Vill.- Naya
Bhargama, Ward No. 8, P.S.- Bhargama, District- Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Uday Singh

For the Opposite Party/s : Mr. Atul Chandra

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

11 28-03-2019 Heard learned counsels for the petitioner, the
informant and the State.

The petitioner, being the husband of the informant is
apprehending arrest in a case registered for the offences
punishable under Section 376 of the I.P.C. and under Section 4
of the Protection of Children from Sexual Offences (POCSO)
Act.

The prosecution case got initiated with a written
report of Kulsum Khatoon, O.P. No.2 submitted to the S.H.O.,
Janki Nagar P.S. is to the effect that the petitioner used to stay in
Chainpura mosque for offering Namaz and used to teach the
students. The informant used to take tuition from the petitioner,



but seven months prior to lodging of the present case, on the promise of marriage, the petitioner ravished her and threatened her to kill if she will disclose this fact to anyone. As a result, the informant got pregnant, thereafter she disclosed this fact to her parents. It is further alleged that when the parents of the informant went to the petitioner, with a request to marry he assured them that he would marry the informant but he did not do so. Thereafter, again some attempts were also made for performance of marriage, but the petitioner did not marry the informant and ultimately the case was filed on 27.11.2017.

Learned counsel for the petitioner submits that the petitioner admits his marriage with the informant and now the petitioner and the informant are living together. It is further submitted that the victim was medically examined on the next day of lodging of the FIR, i.e. 28.11.2017, when the doctor found no sign of physical assault and assessed her age between 17-19 years, hence, no case under Section 4 of the POCSO Act is made out against the petitioner.

A supplementary affidavit dated 27.02.2019 has been filed on behalf of O.P. No.2 wherein the informant has stated that she has performed marriage with the petitioner and she is presently residing peacefully with him. A statement to that effect



has been made in paragraph nos. 1 to 4 of the supplementary affidavit, which reads as follows:

“1. I am victim of the case and presently living with the petitioner as wife of the petitioner and I am satisfied with the petitioner for last six months.

2. That the victim lady Kulsum Khatoon is living with the petitioner peacefully with her infant child and there is no claim of assault and torture against the petitioner.

3. That, earlier the victim girl filed the case under section 376 of IPC and 4 of the POCSO Act due to the illicit relationship with the petitioner meanwhile she conceived and born a child out of the relationship then the petitioner solemnized marriage with him and started to live together as wife and husband.

4. That, now the victim girl is living happily with the petitioner as legal wedded wife and there is no comment upon her relationship with the petitioner.”

A supplementary affidavit dated 28.03.2019 has also been filed by the father of the informant, Md. Fajil, O.P. No.3 wherein he has stated that the petitioner has performed marriage with the informant and they are residing peacefully since last six months. It is also stated that the informant and her father do not want to proceed with the case any further. A statement to that effect has been made in paragraphs nos. 1 to 4 of the supplementary affidavit which read as follows:-

“1. I am father of the victim (informant) of the case and my daughter



namely Kulsum Khatoon is major and she solemnized marriage with the accused namely Md. Afgan @ Hafiz Md. Afgan and out of the wed lock a children is also born.

2. That, it is humbly submitted that my daughter Kulsum Khatoon is living with the petitioner peacefully for last six months and she has not made complain against the petitioner before me.

3. That, if my daughter is satisfied with the petitioner, than I have no objection to their conjugal life and I personally want that they will lead their life happily.

4. That, I alongwith my daughter do not want to proceed in the case further so the same may kindly be ended on the basis of compromise.”

Learned counsel for the informant submits that in view of the present stand of the petitioner, the informant and her father, who are present in the Court, are not opposing the prayer for bail of the petitioner.

Considering that present stand of the parties coupled with the medical report available on record particularly with regard to the age of the informant being assessed between 17 of 19 years of age, let the above named petitioner 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) with two sureties of the like amount each to the satisfaction of learned 1st Addl. Sessions Judge-



cum-Special Judge (POCSO), Purnea in connection with
Special Case No.96 of 2017/C.I.S. No.12 of 2018 arising out of
Janki Nagar P.S. Case No.220 of 2017, subject to the
conditions as laid down under Section 438(2) Cr. P.C.

(Dinesh Kumar Singh, J)

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