

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56579 of 2019

Arising Out of PS. Case No.-290 Year-2019 Thana- LAKHISARAI District- Lakhisarai

MANTU KUMAR, Son of Manoj Sharma, Resident of Mohalla College More Sheikhpura Kachchi Road Girinda, P.S. Shiekhpora, District-Sheikhpura, at Present resident of Mananpur Bajar, P.S. Chanan, District-Lakhisarai.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Adv.

For the Opposite Party/s : Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 11-12-2019 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

2. On account of disappearance of the victim (name withheld) this prosecution has been initiated at the end of the father of the victim. In the written report itself there happens to be disclosure with regard to the age of the victim to be 14 years. It has also been disclosed that during course of search, he came to know that Manoj Sharma, Munna Sharma, Sanoj Sharma, Birendra Sharma, Manish Sharma, Vicki Sharma, Parwati Devi, Guriya Devi, Pushpa Devi and Reshami Devi who were on visiting terms since before and, were pressing upon to get the victim married with Mantu Kumar (petitioner), took such step. It has also been disclosed that the victim had taken away rupees



two lacs in cash as well as golden ornaments.

3. Learned counsel for the petitioner has submitted that the victim is major. As per medical examination, her age has been estimated in between 17-18 years so, giving the benefit of plus minus two years the age of the victim would vary in between 19-20 years.

4. Considering the status of the victim to be major, when the statement of the victim is properly appreciated, then in that circumstance no offence is made out against the petitioner and for that, referred the statement recorded under Section 164 of the Cr.P.C. (para 50) as well as her statement recorded under Section 161 of the Cr.P.C. under para 22 of the case diary. That being so, it has been submitted that no case is made out. Whereupon the petitioner should be released on bail.

5. On the other hand, learned Additional Public Prosecutor opposed the same.

6. Ascertainment of age of the victim by medical evidence has been deprecated by the Hon'ble Apex Court consistently as reported in **2013 Cri.L.J. 3976 (Jarnail Singh vs. State of Haryana)** as well as **(2015) 7 SCC 773 (State of Madhya Pradesh vs. Anoop Singh)**. The consistent view happens to be the age of the victim should be ascertained by



proceeding with an enquiry as provided under the Juvenile Justice (Care and Protection) Act so prescribed to ascertain the age of child in conflict with law. Then the other relevant paragraph happens to be para 92 wherein the School Leaving Certificate, other relevant documents have been produced by the informant, wherefrom the date of birth of the victim is found to be 25.03.2004. That means to say on the date of alleged occurrence she was near about 14 years.

7. In the aforesaid background when her statement recorded under Section 164 of the Cr.P.C. has been gone through (para 50) it is evident (para 3 & 4) that she had stated that the petitioner met with her on 29.03.2019 at Lakhisarai railway station as directed by him. Then thereafter, she was taken to Kanpur where she was kept in a room and at Kanpur, he developed physical relationship with her in which she was consenting party. Consent shown by minor needless to say is non-recognizable in the eye of law.

Consequent thereupon, prayer for bail is rejected.

(Aditya Kumar Trivedi, J)

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