

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3640 of 2020

Arising Out of PS. Case No.-107 Year-2019 Thana- MEHANDIGANJ District- Patna

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ARVIND PANDEY @ BABLOO GUPTA Son of Shri Kishori Lal Gupta
Resident of Bena Sah Ka Bag, P.S.- Mehendiganj, District- Patna

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Deepak Kumar Singh

For the Opposite Party/s : Mr.Ram Sevak Choudhary

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

11 16-09-2020 The court proceeding has been conducted through
virtual mode.

Since the court proceeding is not functional in
physical mode, due to present Pandemic, Covid -19, the present
case has been listed with defects.

Learned counsel for the petitioner undertakes to
remove the defect(s) within a period of four week of resumption
of court proceeding in physical mode.

If the defect(s) is not removed within the undertaken
period, the office will place the matter again.



Heard learned counsel for the petitioner and the State.

The petitioner is languishing in custody since 26.02.2019, in a case registered for the offences punishable under Sections 341, 323, 376(A), 504 and 120B of the IPC and Sections 4 and 21 of the POCSO Act.

The prosecution case, as per the written report of the informant, (name changed - 'X'), recorded by S.H.O., Kankarbagh Police Station on 23.06.2019 at about 10 P.M., is to the effect that the father of the informant, Arvind Pandey, (petitioner) has established forceful physical relationship with the informant since last three years. However, she conveyed about this incident to her step mother, Khushi Devi but she ignored this fact. It is further alleged that the petitioner and her step mother also used to assault the victim, as a result, the victim approached the police.

Learned counsel for the petitioner submits that the petitioner used to live at Lalganj to earn his livelihood. The name of the wives of the petitioner is Sadhana Devi and Khushi Devi, whom the victim claimed as her step mother is the wife of one Jai Prakash Pandey, with whom, the petitioner is having no connection. The informant being the daughter of the petitioner



used to reside with her grand mother at the ancestral house of the petitioner at Menhdiganj. Subsequently, the informant developed some intimacy with a boy, namely, Chhotu Kumar and when the grand mother of the informant protested the same and informed the petitioner, who also made protest then the present case has been lodged against the petitioner at the behest of said Chhotu Kumar. It is further submitted that deliberately the police had not recorded the statement of the grand mother of the informant, who died much after lodging of the FIR. During entire investigation, no family members of the informant has supported the accusation. During medical examination, the age of the victim has been assessed as sixteen and half years where it has been found that the informant used to have forceful sexual intercourse with the victim. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. The medical report does not suggest any sign of rape. Moreover, the victim has been found used to sexual intercourse. Moreover, the investigation has already been concluded and in the present situation, created due to pandemic, Covid-19, since the court proceeding is not functional in physical mode, there is no likelihood of trial being concluded in near future.



Learned APP for the State submits that the petitioner is named in the FIR with specific accusation. Though the age of the victim has been assessed as sixteen and half years, but the victim has been found minor.

Though the accusation is shocking to conscience but the conduct of the informant does not inspire confidence. There is no material on record to suggest that the informant made complaint to her grand-mother who was residing with the informant. Investigating agency has not recorded the statement of the wife of the petitioner Sadhna Devi or the statement of grand-mother and the petitioner has remained in custody for more than a year, the investigation has already been concluded, the period under custody and the trial is not likely to be concluded due to the pandemic, Covid-19 coupled with statement made in paragraph no.3 of the petition to the effect that the petitioner is not having any criminal antecedent. Considering the aforementioned facts, let the petitioner above named be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Additional Sessions Judge-1-cum-Spl Judge, POCSO, Patna, in connection with Special Case No. 115 of 2019, arising out of Mehndiganj P.S. Case No. 107 of 2019.



However, in view of the present pandemic COVID- 19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties including one surety given at the time of provisional bail of the like amount each to the satisfaction of learned Additional Sessions Judge-1-cum-Spl Judge, POCSO, Patna, in connection with Special Case No. 115 of 2019, arising out of Mehndiganj P.S. Case No. 107 of 2019.

The learned Court below will be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

The learned court below will be at liberty to cancel the bail bonds of the petitioner if he defaults for three



consecutive occasions during trial.

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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