

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8377 of 2020

Arising Out of PS Case No.-332 Year-2014 Thana- SAHARSA District- Saharsa

Md. Hafiz Ayaz @ Ayaz Sah @ Md. Ayaz @ Yayaj Sah @ Md. Ayyaz, aged about 26 years, Male, Son of Nemat Sah, Resident of Village - Ganpatganj (Dhobi Tola), P.S.- Raghobpur, District- Supaul.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 17-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Satish Kumar Singh, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner is in custody in connection with Saharsa Sadar PS Case No. 332 of 2014 dated 23.03.2014 instituted under Section 366A of the Indian Penal Code.

4. The allegation against the petitioner is that he had abducted the minor daughter of the informant.



5. Learned counsel for the petitioner submitted that the incident is said to have taken place on 03.05.2014 but the FIR was lodged on 23.05.2014. It was submitted that the petitioner has been falsely implicated as the informant was exerting pressure on the petitioner to marry the victim girl, which he had refused as he was already married. Learned counsel submitted that the girl had returned on 25.05.2014 and has given her statement to the police during investigation that the petitioner had cast a spell on her and when she woke up, she found herself in Delhi from where it is alleged that the petitioner brought her to his village and kept her and also committed rape and thereafter, she was released to return to her home. It was submitted that in the statement to the Court under Section 164 of the Code of Criminal Procedure, 1973, she has stated that the petitioner forcibly took her to Delhi. Learned counsel further submitted that the informant has filed a petition before the police on 27.09.2019, stating that the girl was married five years back and living happily with her family and was also having children from the marriage and that he does not want to pursue the case. It was submitted that the petitioner is in custody since 07.11.2019. Learned counsel submitted that no witness has stated with regard to seeing the petitioner with the girl or taking her away somewhere.



6. Learned APP, from the case diary, submitted that the petitioner was the teacher of the victim girl and in that capacity having enticed/abducted a minor girl is clearly a serious matter. It was submitted that even in the medical report, the age has been determined as 13-14 years and the hymen has been found broken. Learned counsel submitted that it is immaterial as to whether the girl was taken to Delhi under spell or forcibly, for the reason that she was a minor and, thus, petitioner having taken her to Delhi, without any authority, is a crime and in fact, the relevant point is that the girl has consistently stated that the petitioner has committed rape. Learned counsel further submitted that even the medical report shows that the hymen was broken which proves that the victim was subjected to sexual intercourse. Learned counsel submitted that the filing of a petition by the informant that he does not want to press the matter is also of no consequence as the State is the prosecutor and further, the said offence is neither compoundable nor amenable to any compromise between the parties. It was submitted that witnesses have stated about the petitioner being a teacher in the *Madarsa* where the victim girl used to come to study the *Holy Quran* and that the petitioner had enticed and taken away the daughter of the informant. It was further submitted that both in the statement to the police as well as



to the Court, the girl has stated that she was taken away by the petitioner against her will, and, thus, it is irrelevant whether it was under some spell or by force. Learned counsel submitted that the essence of the statement, which is consistent, is that the petitioner had not only taken her away and kept her with him for three weeks, but also had physical relationship. Learned counsel further submitted that the conduct of the petitioner which requires to be taken note of is that though the incident is of 3rd May, 2014, he surrendered before the Court after more than 5 years on 07.11.2019, after managing a compromise with the informant.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on bail.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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