

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11405 of 2020

Arising Out of PS. Case No.-438 Year-2019 Thana- GAYA MUFASIL District- Gaya

Surendra Kumar Son of Late Mathura Prasad, resident of village - Mirzapur,
Line Par, P.S. and District- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amar Nath Yadav
For the Opposite Party/s : Mr.Shantanu Kumar

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 13-08-2020 Heard Mr. Yogesh Chandra Verma, Senior Counsel for
the petitioner assisted by Mr. Amar Nath Yadav and counsel for
the State, Mr. Shantanu Kumar as well as counsel for the
informant, Mr. Saket Anand through Video Conferencing.

In this case, the petitioner is seeking regular bail in
connection with Mufasil P.S. Case No. 438 of 2019 registered
for offence punishable under sections 376 (A) (B)/120 (B)/34 of
the Indian Penal Code and sections 6/10 of the POCSO Act.

This case has been initiated on receipt of the complaint
made by couple who adopted a child from NGO Ecovic
Adoption Centre. They are running NGO for the purposes of
keeping the minor children and they used to give adoption to
those who are required, even to the foreigner. The victim girl
was adopted by the American couple and thereafter, they went



to the State of America from where a letter was received through American Embassy making allegation therein that the victim girl was sexually abused, on that basis, the present case has been initiated. The present petitioner was a Welfare Officer and under his supervision, the NGO was running and on receipt of the complaint, a thorough investigation was done and it was found that several inmates were either physically abused or sexually assaulted. It also appears from the case diary that the photograph was shown to the victim girl who has identified the present petitioner to be involved in the sexual abuse and assault of the victim girl.

Learned counsel for the petitioner has submitted that the petitioner is a government official and he has no business to visit the NGO either daily, fortnight or a month, but he has to ensure that whenever a child is going to be adopted. In the matter, the child was given in adoption following the proper procedure. Before adoption, the doctor had examined the victim girl and everything was done following the international standard, whereafter she was allowed to move out from this country. It has further been submitted that in the FIR there is no allegation against the petitioner so much so of being involved in the sexual abuse and assault upon the victim girl nor in the case



diary any specific allegation has been made to be involved in such activity. It has further been argued that for the wrong act of the employees of the NGO, the petitioner cannot be held responsible and there is no law of vicarious liability, in the criminal cases culpability is decided on the basis of individual act. In the case of the petitioner, no such material has come during investigation nor any specific allegation has been made in the FIR. It has further been argued that if any deviation has been done in the NGO and not making any proper supervision, the Department is required to be initiated a departmental proceeding against the persons concerned, but the petitioner cannot be roped in the present case. It has further been argued that till date, the Department has not initiated any departmental proceeding against the present petitioner so he deserves to be granted regular bail.

Learned counsel for the State has pointed out paragraph 8 of the case diary wherein from the photograph the victim has identified the petitioner to be involved in the sexual abuse and assault which has been corroborated by the submission of the counsel for the informant. It has further been submitted that one Poonam @ Poonam Kumari Sinha had moved before this Court in Cr. Misc. No. 84713 of 2019 and



one Vinod Kumar had also moved before this Court in Cr. Misc. No. 7890 of 2020 and after thorough discussion and consideration, their bail applications have been rejected.

In the present case, a serious allegation has been made and from the case diary it appears that the petitioner has been identified by the victim girl to be involved in such activity, inasmuch as, being Welfare Officer his duty is to look after and take care children staying there. Apart from that the girl child has identified pointing out to involve the nasty activity.

Looking to the entire facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner and accordingly, his prayer for bail is rejected.

(Shivaji Pandey, J)

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