

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18276 of 2020

Arising Out of PS. Case No.-186 Year-2019 Thana- KISHUNPUR District- Supaul

GANESH SHARMA Son of Birendra Sharma Resident of Village - Pipra
Khurd, P.S.- Bhaptiyahi, Distt - Supaul.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vivek Kumar

For the Opposite Party/s : Mr.Raj Ballabh Singh

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 24-08-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel appearing for the petitioner and Shri Raj Ballabh Singh, learned A.P.P. for the State.

The petitioner seeks regular bail in connection with Kishanpur P.S. Case No. 186 of 2019 for the offence punishable under Sections 366A/34 of the Indian Penal Code.

The case of the prosecution in brief is that in the night of 30.07.2019, while the daughter of the informant, aged about 12 years was sleeping in one room, the informant and other family members were sleeping in another room and when the informant had peeped inside the room of her daughter in the night, he found that his daughter was missing and upon enquiry he came to know



from the villagers that the petitioner and one Luv Kumar had made the daughter of the informant sit in between them on a motorcycle, which was being driven by the petitioner, and then they had taken the minor daughter of the petitioner somewhere. Thus, it has been alleged that the petitioner and one another had kidnapped the minor daughter of the informant.

The learned counsel for the petitioner has submitted that the petitioner is innocent, he is having a clean antecedent and has been falsely implicated in the present case. It is further submitted that the statement of the victim girl made under Section 164 Cr.P.C. before the learned Magistrate would show that the victim girl was knowing the petitioner from before and had voluntarily eloped with the petitioner to Delhi where she had stayed for some time and then the maternal uncle of the petitioner had brought the victim girl to the Supaul Police Station. It is further submitted that the petitioner is languishing in custody since 22.08.2019.

Per contra, the learned A.P.P. for the State has vehemently opposed the prayer for bail.

I have heard the learned counsel or the parties, perused the materials on record and gone through the case dairy in question from which it is apparent that the complicity of the petitioner in the alleged occurrence is writ large on the records of the case and admittedly the petitioner had kidnapped and allured the minor



victim girl to Delhi. It is also apparent from the medical report of the victim girl that there are signs of sexual intercourse and commission of rape. As far as the submission of the learned counsel for the petitioner, to the effect, that the victim girl had eloped with the petitioner voluntarily and there has been consensual sex in between them, it would suffice to state that even if an intercourse with a minor is consensual, still the act amounts to statutory rape inasmuch as the minor is incapable of giving her consent to the said act, hence any such consent becomes irrelevant and has got no value in the eyes of law.

Considering the facts and circumstances of the case as also taking into account the materials available in the case diary, this Court finds that a prima facie case is definitely made out against the petitioner herein of having committed a heinous crime of rape and having kidnapped the minor victim girl, hence I do not find that the present case is a fit case for grant of bail to the petitioner herein, hence the present petition stands dismissed.

(Mohit Kumar Shah, J)

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