

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78185 of 2019

Arising Out of PS. Case No.-241 Year-2019 Thana- KATIHAR MUFFASIL District- Katihar

MD. IZHAR, aged about 19 years, Gender-Male, son of Sattar, resident of village-Jafarganj, P.S. Kastihar Muffasil, District-Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Jha

For the Opposite Party/s : Mr.Bal Mukund Prasad Sinha

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 19-06-2020 The matter has been taken up through virtual court proceeding.

Heard learned counsel for the petitioner and the State.

The petitioner who is languishing in custody since 13.09.2019 has prayed for bail in connection with Muffasil P.S.Case No.241 of 2019 registered for the offences punishable under Sections 365, 366A and 376 of the Indian Penal Code, 1860 and Sections 8 and 4 of the Prevention of Children from Sexual Offences Act, 2012.

The prosecution case as per the written report of Samrun Khatoon submitted before the Station House Officer, Muffasil Police Station, Katihar is to the effect that on 12.09.2019, the petitioner Md. Izhar called the daughter of the informant (hereinafter addressed as 'X') near a railway track



and tried to ravish her but somehow she managed to escape from the place of occurrence. It is alleged that about 15 days prior to the alleged occurrence, the petitioner on promise of marriage established physical relationship with the victim.

It is submitted by learned counsel for the petitioner that medical report suggests that the age of the victim girl between 17 to 18 years. No mark of injury has been found on any part of the victim's body nor the presence of spermatozoa has been found though she has been used to have sexual course. In statement recorded under Section 161 of the Cr.P.C. she has stated that she was in love with the petitioner but in her statement under Section 164 of the Cr.P.C. which was recorded on the pressure of the family members, she has stated that she has been forcefully ravished by the petitioner, hence neither any case under Section 366 nor under Section 376 of the IPC nor under Section 8/4 of the POCSO Act is made out against the petitioner.

It is submitted by learned APP for the State that the accusation is specific against the petitioner and as per the FIR, the victim is a minor and she has stated in her statement recorded under Section 164 of the Cr.P.C. that she was ravished by the petitioner.



Considering the inconsistency between the statement of the victim girl recorded under Section 161 of the Cr.P.C. and 164 of the Cr.P.C., the medical report does not suggest any injury, the doctor assessed the age of victim between 17 to 18 years and the report of the learned ADJ-I-cum-Special Judge, Katihar, dated 15.04.2020 suggests that only charges have been framed coupled with the fact that there is no likelihood of trial being concluded in near future since physical court proceeding is not functional due to present pandemic COVID-19 and statement being made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, 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 Ist Additional Sessions Judge-cum-Special Judge, Katihar in connection with G.R.No.4212 of 2019 arising out of Muffasil P.S.Case No.241 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



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.10,000/- (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 Ist Additional Sessions Judge-cum-Special Judge, Katihar in connection with G.R.No.4212 of 2019 arising out of Muffasil P.S.Case No.241 of 2019.

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

(Dinesh Kumar Singh, J)

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