

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7890 of 2020

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

VINOD KUMAR Son of Ram Nagina Rai Resident of Village - Lakhibagh Ecovic (Special Adoption Agency) P.S.- Muffasil, Distt.- Gaya, at Presently residing in House no.278 Nehru Nagar, P.S.- Patliputra Colony, Distt.- Patna.
... .. Petitioner/s

Versus

THE STATE OF BIHAR Opposite Party/s

Appearance :

For the Petitioner/s	:	M/s Ajay Kumar Thakur, Shiva Shankar Sharma, Advocates
For the State	:	Mr.Ram Priya Sharan Singh, A.P.P.
For the Informant	:	Mr. Sayed Imran Ghani, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV ORDER

6 23-06-2020 I have already heard Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner, Mr. Ram Priya Sharan Singh, learned Additional Public Prosecutor for the State as well as Mr. Sayed Imran Ghani, learned counsel appearing for parents of the victim girl through video conferencing.

Petitioner is in jail custody since 21.9.2019 in Muffasil P.S. Case No. 438 of 2019 registered under Sections 376(AB), 120B/34 of the Indian Penal Code and Sections 6/10 of POCSO Act.

Admittedly, petitioner was Director of Ecovic, Specialised Adoption Agency of Gaya, at the time of alleged occurrence. It is alleged that the Ecovic Adoption Agency intends to give in adoption to victim girl to an American couple, namely, Mr. Matthew Stephen Taplin and Mrs. Stacia June



Taplin and, accordingly, the permission of adoption was granted by learned Principal Judge, Family Court, Gaya, Bihar vide judgment dated 4.7.2019 passed in Misc. (Adoption) Case No. 04/2019 and after performing the legal formalities, the victim girl was adopted by the above stated American couple and the victim girl was handed over to adoptive parents on 19.8.2019. Thereafter, the victim girl along with her adoptive parents reached to United States of America.

The Embassy of United States of America in India reported to Central Adoption Resource Authority, Ministry of Women and Child Development, Government of India, that during the interview of adoptive parents of victim girl at Embassy of United States of America in India on 30.8.2019, the adoptive parents disclosed about the sexual assault on victim girl by men employees of the aforesaid Ecovic Adoption Agency at Gaya, Bihar. It was, further, reported that objects like stick were inserted into the private part of the victim girl and she identified two males for the alleged incident, after seeing the photographs of the aforesaid persons. Thereafter, the Principal Secretary of Central Adoption Resource Authority vide letter dated 18.9.2019 requested the Director General of Police, Bihar to take action against the persons responsible for sexual assault



on a minor girl. The Director, Social Welfare – cum – Vice President of State Child Protection Committee, Bihar, Patna vide his letter dated 19.9.2019 directed to Assistant Director, District Child Protection Unit, Gaya, to lodge report in concerned local police station and, thereafter, the present case was lodged on the written report of Assistant Director, District Child Protection Unit, Gaya on 20.9.2019.

Learned counsel, Sri Thakur, appearing for petitioner submits that, admittedly, adoption of the victim girl took place on 19.8.2019 after performing all the legal formalities. He, further, submits that before handing over the victim girl to adoptive parents, the victim girl was medically examined by one Dr. Ashok Kumar Sinha, who was examined by the Investigating Officer in course of investigation but the aforesaid doctor did not find any sign of sexual assault on the victim girl. He, further, submits that the adoptive parents of victim girl applied for VISA in Embassy of United States of America in India and before issuance of VISA, the victim girl was, again, examined by the doctor at Max Hospital but, again, the said doctor did not find any sign of sexual assault on the victim. Learned counsel of the petitioner, further, submits that the adoptive mother of victim girl claimed in her E-mail that on



20.8.2019, she had noticed some abnormality in the victim girl while she was walking and, again on 22.8.2019 she noticed abnormality on the private part of victim, while she along with victim girl had stayed at Patna. Learned counsel of the petitioner, further, submits that the adoptive mother of the victim, further, claimed that on 22.8.2019, the victim girl had disclosed to her that she was sexually assaulted at Ecovic Centre. Learned counsel of the petitioner, further, submits that the aforesaid fact, clearly, indicates that the adoptive mother of victim girl had already come to know about the so-called incident of sexual assault prior to leaving Patna but it is surprising enough that she did not disclose the aforesaid fact to doctor, who examined the victim girl. He, further, submits that neither the adoptive parents nor the victim girl was examined by the Investigating Officer in course of investigation and except suspicion, there is no legal evidence against the petitioner. He, further, submitted that in course of investigation, Investigating Officer visited the Embassy of United States of America in India but the employees of the said Embassy did not disclose the name of the person before whom the adoptive mother of victim had disclosed about the alleged incident. He, further, submits that the chargesheet against the petitioner has been filed though



there is no legal evidence against him.

On the other hand, learned Additional Public Prosecutor opposed the prayer submitting that the victim girl identified petitioner and co-accused in a photographs and, the adoptive parents of victim girl sent photographs and video to Embassy of United States of America in India through E-mail but Investigating Officer conducted the case in very perfunctory manner. He, further, submits that, admittedly, petitioner was Director of concerned Centre and, therefore, he is more responsible for the alleged offence.

Learned counsel appearing for adoptive parents of victim seconded the submission advanced by learned Additional Public Prosecutor and also added that that the adoptive mother has very clearly stated in her E-mail that on 22.8.2019, the victim girl was suffering from diarrhea and she had a diaper and when victim girl started crying and became frantic, she thought that the victim girl was crying due to diaper. He, further, submits that the adoptive mother of the victim also stated in her E-mail that on 22.8.2019, she noticed some injury on the private part of the victim girl and on next morning, the victim girl disclosed the factum of sexual assault on her. The victim girl also disclosed that the Director would give her medicines at



night. Learned counsel of adoptive parents of victim girl, further, submits that the adoptive mother of victim very clearly stated that before leaving Patna, she as well as her husband met with an Officer of UNICEF, who suggested to report about the incident to the local police but she was not in a position to trust on any one. She along with her husband and victim girl came Delhi. He, further, submits that the adoptive mother of victim narrated the entire story in the Embassy of United States of America in India and also mentioned the aforesaid fact before the doctor, who examined the victim girl before grant of Visa but the said doctor advised to tell the aforesaid fact to Embassy and, thereafter, she as well as her husband told the aforesaid fact in Embassy of United States of America. He, further, submits that the adoptive parents of victim girl are residing at United States of America and it was not possible to them to come back to India only for giving their statements. He also submits that it is also an admitted position that at the time of alleged offence, the victim girl was aged about 5 years and she was not capable to understand the nature of the offence.

Having heard the contentions of both the parties, I went through the case diary. No doubt, the statements of adoptive parents of victim girl have not been recorded by the



Investigating Officer due to their non-availability in India nor the adoptive parents of victim sent their statements to Investigating Officer through E-mail but in course of investigation, it came to light that the State Government constituted Committee of doctors to examine the other girls, who were residing in the concerned Centre, at the time of alleged occurrence, and sexual assault on one Suman Kumari was also found. Furthermore, I find that one witness, namely, Pratima Singh, claimed that on 20.8.2019, the adoptive parents along with victim had stayed at her house at Patna and when in the night, victim girl started weeping, she went there and found the victim girl in pain and she also noticed that the private part of the victim was reddish and enlarged. The statement of aforesaid witness has been recorded at paragraph 132 of the case diary. It is true that the doctor, who examined the victim girl prior to her adoption as well as the doctor, who examined the victim girl prior to issuance of Visa, did not find any sexual assault on victim girl but it appears that aforesaid doctors examined the victim girl in most formal way. Moreover, the adoptive mother of the victim girl claimed that she disclosed about the sexual assault on the victim before the doctor, who examined the victim prior to issuance of VISA but the aforesaid



doctor did not care about the complaint made by adoptive mother and on contrary, he advised the adoptive mother of the victim to report the matter to concerned Embassy. The present case is very serious in nature and the petitioner being Director of the concerned Centre is more responsible for the alleged occurrence.

Considering the aforesaid facts and circumstances as well as submissions of the parties, I am not inclined to release the petitioner on bail, for present, and, accordingly, his prayer for bail stands rejected.

(Hemant Kumar Srivastava, J)

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