

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13478 of 2021

Arising Out of PS. Case No.-135 Year-2019 Thana- RAUTARA District- Katihar

CHHOTU KUMAR MANDAL @ CHHOTU KUMAR S/o Shanti Mandal @
Shanti Mahto R/o village- Baharkhal Bishanpur, P.S.- Rautara, District-
Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh, Sr. Advocate Mr. Harish Chandra Patel
For the State	:	Mr.APP.
For the Informant	:	Mr. Kamesh Kr. Pathak

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 07-12-2021 Heard learned senior counsel for the petitioner and
learned counsel for the informant and learned APP for the State.

Petitioner seeks bail in connection Rautara P.S. Case
no. 135 of 2019 registered for the offence punishable under
sections 341,323, 376, 504 and 506/34 of the Indian Penal Code
read with section 4 of the POCSO Act.

Learned senior counsel for the petitioner submits that
petitioner is in custody since 27.05.2020 and is person with
clean antecedent and charge sheet has been submitted. Learned
senior counsel for the petitioner further submits that from
perusal of the allegation as alleged in the FIR, it would manifest
that the informant aged about 19 years alleges that on assurance
of the marriage of the petitioner, informant entered into physical



relationship with petitioner from 2.6.2019 to 20.11.2019 but thereafter, petitioner resiled from promise of marriage, it is further alleged that while they were in relationship petitioner on 20.11.2019 about 11 p.m, called the informant on which informant went to bamboo orchard where petitioner wanted to establish physical relationship and on objection petitioner forcibly committed rape and when the informant raised hulla informant's parents reached there. Learned senior counsel submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant herself has disclosed her age as 19 years in the FIR. Further from the allegation, it also manifest that relationship was consented and the informant alleges that she established physical relationship with petitioner on promise of marriage from 2.6.2019 to 20.11.2019. Learned senior counsel further submits that the informant in the FIR claims to be 19 years of age and further in her statement under section 164 Cr.P.C has also disclosed her age to be 19 years, being a major she was capable of understanding the consequences of her action. Learned senior counsel for the petitioner submits that as far as submissions of learned counsel for the informant is concerned that informant was a minor on the date of occurrence as her date of birth is 10.4.2002 as per



mark sheet which has been produced in court, then also informant was more than 17 years and as such she had reached the age of discretion and being a literate girl she was capable of understanding the nature of relationship in which she had entered. Learned senior counsel for the petitioner submits that admittedly, occurrence is alleged to have been committed in between 2.6.2019 to 20.11.2019 but FIR came to be instituted on 17.12.2019 which in itself demonstrates that the informant was not raped by the petitioner or else FIR would have been instituted promptly because the informant has admitted to have entered into physical relationship with petitioner as such there was no occasion for her to conceal the fact that she was raped. Further, it is submitted that the informant in her statement under section 164 Cr.P.C has reiterated what has been alleged in the FIR.

Learned counsel for the informant vehemently opposes the bail application and submits that the informant on the alleged date of occurrence was a minor aged about 17 years of age. Learned counsel for the informant further submits that there was a panchyati between family members of the informant and the petitioner but panchyati failed and thereafter this FIR came to be instituted.



Learned senior counsel for the petitioner countering the submissions of learned counsel for the informant submits that panchyati was not with respect to issue of rape or relationship between the informant and the petitioner but was with respect to purchase of 14 decimal of land. Learned senior counsel submits that he has specifically pleaded in para 14 of bail petition that father of the petitioner had purchased 14 decimals of land from father of the informant and had paid 3.50 lacs by way of consideration but registry was not being done.

Learned APP also opposes the prayer for bail.

Considering the facts that petitioner is in jail custody since 27.05.2020, is person with clean antecedent and charge sheet has been submitted and as far as allegation for the present as alleged in the FIR are in the realm of the allegation and still to be tested by a court of competent jurisdiction in the trial, the petitioner is directed to be released on bail on furnishing bail bonds of Rs 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Special Judge-cum- Addl. Sessions Judge VI, Katihar in Rautara P.S. Case no. 135 of 2019.

(Satyavrat Verma, J)

s.hassan/-

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