

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13880 of 2021

Arising Out of PS. Case No.-68 Year-2019 Thana- MAHILA P.S BAGHA District- West
Champanan

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BIRENDRA KUMAR @ BIRENDRA RAM aged about 20 years S/O
Ramakant Ram Resident of Pateshara chimani Tola, P.S. - Naurangiya,
District - West Champanan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Yogendra Kumar, Addl Public Prosecutor
Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 23-08-2021 Heard learned counsel for the petitioner, the State and the
informant.

The petitioner prays for grant of regular bail in a case
registered for the offence punishable under section 376 and
other ancillary sections of the Indian Penal Code and section 4
of the POCSO Act.

As per the prosecution case, the petitioner with support
of his family persuaded the informant with assurance to marry
her and took her to his home and established physical relation
and when this fact came to the knowledge of the informant's
family, a panchayati was held deciding that the petitioner and
informant will stay together and they would solemnize



marriage on attaining majority. It is further alleged that meanwhile accused persons administered some medicine and aborted pregnancy of the informant and after sometime they thrashed her and ousted from the house and refused to marry.

Learned counsel for the petitioner submits that apparently informant is major and is a consenting party in the case. Allegation of abortion is baseless as the same is not supported by any medical proof. Medical report of the informant does not show any sign of sexual assault and the same reflects that the age of the informant is 19 to 21 years. In the aforesaid backdrop, no case under section 376 of the Indian Penal Code or even under section 4 of the POCSO Act no case is made out against the petitioner who claims clean antecedent and is in custody since 13.2.2020.

Supplementary affidavit has also been filed by the petitioner bringing on record order dated 3.2.2021 (Annexure 2). By the said order, after considering the age of victim, the Special court, POCSO, West Champaran at Bettiah has found the victim major and has removed POCSO Act in the present case and has ordered to transfer the case before the usual court where the trial is to be proceeded.

Learned counsel appearing for the State and the



informant oppose the prayer for bail. They submit that there is specific allegation against the petitioner that he committed sexual assault on the informant and got her aborted by administering medicine.

Considering the rival submissions of the parties, materials available on the record and the fact that there is no medical proof in support of abortion of the informant as also the fact that the special court vide order dated 13.2.2020 finding the informant aged about 19 to 21 years, i.e., major, has ordered to remove the POCSO Act, let the petitioner, mentioned above, be enlarged on bail on furnishing bail bond of Rs.10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge I cum Special Judge West Champaran at Bettiah in Bagaha Mahila Police Station Case No. 68 of 2019 on the following conditions:-

(1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.



(2) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Prabhat Kumar Singh, J)

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