

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 18083 of 2021**

Arising Out of PS. Case No.-29 Year-2019 Thana- ISHIPUR District- Bhagalpur

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MONU KUMAR @ ABHISEK KUMAR Son of Bindeshwari Singh Resident
of Village - Aurangabad, P.S.- Kahalgaon, District - Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr Ranjan Kumar Jha, Advocate
For the S t a t e	:	Ms Meena Singh, APP
For the I n f o r m a n t	:	Mr Manohar Prasad Singh, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 25-10-2021 Heard learned counsel for the petitioner; learned Additional Public Prosecutor (for brevity, *APP*) appearing for the State of Bihar as well as learned counsel for the informant who has assisted the learned APP in opposing the prayer for bail.

The petitioner seeks bail in Ishipur Barahat Police Station (for brevity, *PS*) Case No 29 of 2019 dated 01.04.2019 instituted for the offence punishable under Section 366A of Indian Penal Code (for brevity, *IPC*) and Section 8 of Protection of Children from Sexual Offences (for brevity, *POCSO*) Act.

Prosecution case is that the informant's minor daughter has been kidnapped by the petitioner along with all his family members and she has been subjected to forcible sexual



intercourse by the petitioner.

Learned counsel for the petitioner submits that falsity of the allegation is apparent from the delay in lodging the First Information Report (for brevity, *FIR*). Submission is that the victim has allegedly been kidnapped on 26.03.2019, whereas *FIR* has been lodged on 01.04.2019. The victim has been recovered by chance and in her immediate statement recorded under Section 161 of Criminal Procedure Code (for brevity, *Cr P C*), she has claimed to be a major and that she had gone on her own volition with the petitioner and solemnized marriage. Just three days later, in her statement recorded under Section 164 of *Cr P C*, she has stated to the contrary and supported the prosecution case. Such stark contradiction has emerged on account of influence by the family members for three days while she remained with them after her recovery.

Learned counsel for the petitioner also draws attention of this Court towards the victim's answer to Question No 3 during her examination under Section 164 of *Cr P C* wherein she has stated that she was taken to the PS as well as brought before the Court by the petitioner and other accused persons. This is highly improbable and unnatural having regard to the allegation, that perpetrator of such a crime would bring the



victim to Court to depose under Section 164 of Cr PC. Such statement of victim casts suspicion and doubt on the prosecution case. Petitioner, in these circumstances, has remained in Custody since 10.12.2020, when he had surrendered in the Court below. It is submitted that the petitioner bears clean antecedent. Further submission is that in the medical examination of the victim as well as her statement under Section 161 of Cr P C, she has been found to be aged about 18 years. Therefore, offence under Section 366A of IPC or Section 8 of POCSO Act would not be made out in the instant case.

Learned APP as well as the learned counsel for the informant have opposed the prayer for bail. They have stated that in her statement recorded under Section 164 of Cr P C, the victim has supported the allegation. She is a minor and, therefore, this Court should now allow the petitioner's prayer for bail.

Having considered the rival submissions, this Court, for the purposes of grant of bail, is inclined to accept the submissions advanced by the petitioner's counsel. Prayer for bail is allowed. Let the petitioner, above named, be released on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the



satisfaction of Additional Sessions Judge VII -cum- Exclusive Special Judge, POCSO, Bhagalpur in connection with POCSO Case No 29 of 2019 arising out of Ishipur Barahat PS Case No 29 of 2019 subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

Learned counsel for the petitioner is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

M.E.H./-

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