

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 28269 of 2020

Arising Out of PS Case No.-214 Year-2019 Thana- BIHTA District- Patna

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Amit Kumar, aged about 22 years, Gender- Male, Son of Awadhesh Kumar Singh, Resident of Village - Bisharpur, PS - Naubatpur, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate
For the State : Mr. Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 07-04-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Vijay Kumar Sinha, learned counsel for the petitioner and Mr. Mukeshwar Dayal, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner is in custody in connection with Bihta PS Case No. 214 of 2019 dated 23.02.2019, instituted under Sections 376(2)(F) of the Indian Penal Code and 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act').



4. This is the second attempt for bail by the petitioner as earlier such prayer was rejected by order dated 11.12.2019 passed in Cr. Misc. No. 45991 of 2019.

5. The allegation against the petitioner is that he had committed rape on the daughter of the informant in the house where he had come to teach her.

6. Learned counsel for the petitioner submitted that thought the allegation is very serious, but there is discrepancy in the prosecution story which is quite glaring. It was submitted that in the FIR as also the deposition of the victim before the Court under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), the age of the victim girl is said to be six years but the medical report of the examination done on the same day reveals that the age of the victim was between 12-13 years. Thus, it was submitted that the prosecution has not truthfully stated the correct facts which raises serious doubt with regard to the allegation itself. Learned counsel submitted that even on merits, the allegation that the petitioner had gone to teach mathematics in the house of the informant and there were four other students also, committing such act does not appear to be possible or practical. Learned counsel submitted that the police also have acted in a highhanded manner inasmuch as, when



already there is a special act i.e., the POCSO Act, the so-called offence is already covered under various sections of the said special act, but still the police have inserted Section 376(2)F of the Indian Penal Code, which is not only erroneous but factually also incorrect. It was submitted that there is no such Section as 376(2)F in the Indian Penal Code which indicates that only as a formality, the police had tried to put serious sections in the FIR to harass the petitioner with ulterior motives. Learned counsel submitted that the petitioner is in custody from the date of occurrence itself i.e., 23.02.2019.

7. Learned APP submitted that the petitioner had been indulging in the said act for the last 2-3 days after asking the other students to go out of the room and even on the faithful day, the informant, who is the mother of the victim, had seen the occurrence, then the victim girl had disclosed and had further stated that the petitioner has threatened her not to disclose anything and that she would be punished if she did so. Learned counsel submitted that in the medical report, the age is immaterial since it is much below the age of maturity and further that the statement under Section 164 of the Code is fortified as the girl being aged 12-13 years, as per the medical report, is in a better mental condition and more mature to make a statement before the



Court. Learned APP drew the attention of the Court to the medical report, copy of which is Annexure-4, and submitted that the hymen was found torn and the vulva and surrounding area was stained with blood, which also indicates that the allegation is correct. Learned counsel submitted that the Court would also consider the fact that no mother would make such a serious allegation if the same was not true at the cost of damaging the reputation of her own daughter. Finally, learned APP submitted that no fresh ground has been made for reconsideration of the case for bail of the petitioner after the last order of rejection except for efflux of time, which too, is hardly worth consideration in the particular facts and circumstances of the present case.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant bail to the petitioner.

9. Accordingly, the application stands dismissed.

10. However, the Court below is directed to expedite the trial and conclude the same at the earliest.

(Ahsanuddin Amanullah, J.)

P. Kumar

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