

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.3177 of 2021**

Arising Out of PS. Case No.-270 Year-2021 Thana- MUFFASIL District- West Champaran

Nand Kishore @ Nanki Mahto, S/O Sri Prabhu Mahto, Resident of Village-
I.T.I., Budha Colony, P.S-Bettiah Muffasil, District-West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Umesh Chandra Verma, Advocate

For the Respondent/s : Mr.Binay Krishna, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 21-09-2021 Heard learned counsel for the appellant and Mr. Binay
Krishna, learned Special P.P. for the State.

The appellant, in the present case, is seeking setting
aside of the order dated 19.06.2021 passed in A.B.P. No. 1749
of 2021 arising out of Bettiah Muffasil P.S. Case No. 270 of
2021 registered for the offence punishable under Section
366A/34 of the Indian Penal Code, Section 8 of the Protection
of Children from Sexual Offences Act and Section 3(i)(r) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act by learned 6th Additional Sessions Judge-cum-
Special Judge, SC/ST Act, West Champaran, Bettiah whereby
and whereunder the prayer for regular bail of the appellant has
been rejected. He is in custody since 20.04.2021. Appellant has

otherwise no criminal antecedent.

As per the prosecution story, the appellant, his father and his mother with the help of some other persons acted under a well neated conspiracy, kidnapped the daughter of the informant with an intention to marry and to lower down the prestige of the informant in the society.

Learned counsel submits that the allegation that the daughter of the informant was kidnapped by this appellant is false and baseless. The daughter of the informant was recovered by Police on 19.04.2021 and she has in her statement under Section 161 Cr.P.C. categorically stated in quiet clear terms that she was not kidnapped, she voluntarily eloped with the appellant and tied herself in wedlock with the appellant at Patlar Mandir and both were living their conjugal life as husband and wife. This is recorded in paragraph '44' of the case diary. No statement of the victim girl was recorded under Section 164 Cr.P.C.

It is further submitted that the medical board constituted for purpose of medical examination of the victim has found the age of the victim between 19-20 years. It is submitted that in such circumstance where the age of the victim has been assessed as 19-20 years by a duly constituted medical board, it

casts grave doubts over her age recorded in the school certificate and at last for purpose of bail such benefit of doubt will go in favour of the appellant. Learned counsel has relied upon the three Judges Bench decision of the Hon'ble Supreme Court in the case of **Rajak Mohammad Vs. State of Himachal Pradesh** reported in **(2018) 9 SCC 248** (paragraph 8 & 9).

Mr. Binay Krishna, learned Special P.P. for the State has in unequivocal terms confirmed that medical board has found the age of the victim as 19-20 years and she has in her statement before Police under Section 161 Cr.P.C. stated that she had solemnized marriage with this appellant and was leading a conjugal life when both of them were recovered and brought to the Police Station.

Considering the facts and circumstances of the case wherein the victim girl has been assessed by the medical board in between 19-20 years, there is no 164 Cr.P.C. statement and in the case diary it has come that the victim was not kidnapped rather she had gone on her own with the appellant and had solemnized marriage, following the observations of the Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra) in paragraph 8 and 9 which are quoted hereunder:

“8. On the other hand, we have on record the evidence of Dr. Neelam Gupta (PW 8), a

Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

This Court sets-aside the impugned order and directs release of the appellant above-named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 6th Additional Sessions Judge-cum-Special Judge, SC/ST Act, West Champaran, Bettiah in connection with A.B.P. No. 1749 of 2021 arising out of Bettiah Muffasil P.S. Case No. 270 of 2021, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the appellant and in case at any stage it is found that the appellant has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be

delayed for purpose of or in the name of verification.

This appeal stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.