

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32416 of 2020

Arising Out of PS. Case No.-105 Year-2020 Thana- BAUSI District- Purnia

Md. Sultan Son of Md. Ashfaque Resident of Village-Nurkani, P.S.-Baisi,
District-Purnea.

... .. Petitioner/s

Versus

The State of Bihar Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Satish Chandra Mishra, Advocate
For the Opposite Party/s :	Mr. Madhuranand Jha, APP
	Mr. Md. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 15-03-2021 A supplementary affidavit has been filed on
behalf of petitioner during the course of argument.

Let it be taken on record.

Heard Mr. Satish Chandra Mishra, learned
Advocate for the petitioner and Mr. Md. Helal Ahmad for
the informant. The State is represented by Mr.
Madhuranand Jha, learned APP.

The petitioner seeks bail in connection with
Special (POCSO) Case No. 30 of 2020/CIS No.
30/2020, arising out of Baisi P.S. Case No. 105 of 2020
dated 30.04.2020 instituted for the offences under
Sections 341, 323, 376, 504/34 of the Indian Penal
Code and Sections 4/6 of the POCSO Act.

The petitioner is said to have subjected the
victim to sexual intercourse on the pretext of marrying



her in future. The FIR which is based on the statement of the victim discloses that while the petitioner and the victim were in the maize field, they were seen by two of the village boys who spread the rumour in the village about the relationship of the petitioner with the victim.

It has been submitted on behalf of the petitioner that thereafter the petitioner is alleged to have assured the victim that she should not worry about her reputation as the petitioner had definite intentions of marrying her. The marriage did not take place as the family members of the petitioner created hurdles.

It has been urged on behalf of the petitioner that victim in the FIR has disclosed her age to be 17 years, thereby projecting herself a minor but her Aadhar Card discloses that she was more than 17 years of age on the date of the occurrence. Apart from this, it has been shown to this Court that in the medical report of the victim, her age has been assessed between 18-19 years on the date of occurrence.

Learned counsel for the petitioner has further submitted that in the 164 statement, the victim has not stated anything about any sexual assault on her but has only harped on the promise of marriage and the petitioner reneging on said promise. The victim has also stated in her 164 statement that the petitioner has



married another person at the instance of her family members so that the victim or her family members may not stake any claim for the marriage of the victim with the petitioner.

Mr. Helal Ahmad, learned Advocate for the informant has opposed the prayer for grant of bail and has stated that there is specific accusation in the FIR of the petitioner having committed rape on the victim. It was only when the petitioner was spotted while on the act, that he managed to run away from the maize field.

In the inquiry which was undertaken by the court regarding the determination of the age of the victim, the court has found the victim to be a minor on the date of the occurrence.

However, while recording such finding, the court below has also taken note of the fact that there was a relationship between the petitioner and the victim for about three years.

This Court had called for a report from the court below, on an earlier occasion, to know about the stage of the case. The report which was received disclosed that the case, at that time, was pending for determination of the age of the victim. Now that the issue with respect to the age of the victim has been resolved but without any objection by the petitioner,



charges are shortly to be framed.

Learned counsel for the petitioner has submitted that in this background and keeping in mind that the petitioner is in custody since 30.04.2020, when the charges also have not been framed as yet, the petitioner should be released on bail subject to any conditions which this Court may deem fit to impose in order to ensure the presence of the petitioner at the time of trial and his participation.

Mr. Helal Ahmad, learned Advocate for the informant, however, has argued that the petitioner does not deserve any leniency on the issue of consent as consent of a minor is no consent in the eyes of law.

This Court, on a consideration of entire facts, finds that the trial of this case has not yet begun whereas the petitioner is in custody for almost a year.

Considering the entire facts brought to the notice of this Court, this Court is inclined to grant bail to the petitioner subject to certain conditions.

The petitioner shall be released on bail on his furnishing bonds in the sum of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge (POCSO), Purnea in connection with Special (POCSO) Case No. 30 of



2020/CIS No. 30/2020, arising out of Baisi P.S. Case No. 105 of 2020.

The release of the petitioner shall be subject to the conditions noted hereinafter:

One of the bailors of the petitioner shall be his close relative.

The petitioner shall not absent himself from the trial proceedings on two consecutive occasions without seeking prior permission of the trial court. Should he do so, the trial court will proceed for cancellation of his bail.

The petitioner shall not tamper with the evidence or shall intimidate any witness or shall do anything to impede the pace of trial. Should he be found doing so, it would be open for the Investigating Officer of this case to file a suitable application before the trial court for cancellation of his bail.

While furnishing bail bonds, the petitioner shall give his mobile telephone number as well as the mobile telephone numbers of his bailors, which shall be kept in operative condition.

The petitioner shall also get his presence marked before the officer-in-charge of the concerned police station once every month, preferably on the first Monday. The officer-in-charge of the concerned police station shall not unnecessarily make the petitioner wait



in the police station and shall immediately record his presence on his visiting the police station.

The petition stands disposed off accordingly.

(Ashutosh Kumar, J)

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