

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.6198 of 2021**

Arising Out of PS. Case No.-53 Year-2020 Thana- MANSAHI District- Katihar

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Siraj @ Md. Siraj @ Md. Seraj, Son of Yasin @ Md. Yasin, Resident of
Village-Chhoti Tangariya (Sukhasan) P.S-Barari, Distt.-KATIHAR

... .. Petitioner

Versus

1. The State of Bihar
2. Afsana Khatoon, Wife of Md. Siraj, Resident of Village-Kushaha
(Mohanpur), P.S-Mansahi, District-Katihar

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Ranjit Kumar Singh, Advocate Mr. Pawan Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Md. Aslam Ansari, A.P.P.
For the Informant	:	Mr. Jitendra Kumar Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 14-09-2021 Learned counsel for the petitioner undertakes to

remove all the defects as pointed out by office within four

weeks after start of normal functioning of the Court.

Heard Mr. Ranjit Kumar Singh, learned counsel for
the petitioner, Mr. Jitendra Kumar Giri, learned counsel for the
informant-opposite party no. 2 and Mr. Md. Aslam Ansari,
learned A.P.P. for the State. He is in custody since 01.08.2020.
Petitioner has otherwise no criminal antecedent.

Petitioner in the present case is seeking regular bail in
connection with Mansahi P.S. Case No. 53 of 2020 registered
for the offence punishable under Section 363/366(A)/506/34 of

the Indian Penal Code.

As per the prosecution story, the daughter of the informant aged about 16 years went behind her house to attend the call of nature on 20.06.2020 at 11.00 P.M. but after some times she did not return her house. It is alleged that the wife of the informant tried to search her but the daughter was traceless. The informant and the co-villagers tried to search her, in course of search they came to know that during the night hours this petitioner and four other co-accused had taken away his daughter for purpose of marriage. It is alleged that when the informant went to meet the father of the petitioner to enquire about the matter, he was threatened by the father of the petitioner. It is alleged that he told the informant that he should get away otherwise presently his daughter has been kidnapped, he will also be killed. The F.I.R. was lodged on 01.07.2020.

Learned counsel for the petitioner submits that it is important to consider that the informant came to know about the kidnapping of his daughter for purpose of marriage but he did not inform this to the Police Station for 11 days.

It is further stated that the daughter of the informant returned home on 31.07.2020. In the meantime, the petitioner and the daughter of the informant solemnized marriage which

may be found from the authentication declaration and the affidavit sworn by the daughter of the informant. The photograph of the petitioner and the daughter of the informant are affixed at the top of the affidavit.

Learned counsel relies upon a Division Bench judgment of this Court in Criminal Writ No. 1016 of 2011 which was filed for release of the petitioner from After Care Home, Nari Niketan, Gaighat, Patna City on the ground that she was major. In that case also the allegation was that the petitioner was 16 years old and she was kidnapped for purpose of marriage. The certificate showing her age which was produced by the father of the petitioner showed her date of birth slightly above 17 years of her age. She was sent to the observation home. In that context the Hon'ble Division Bench of this Court while looking into the fact that the case is one of a Muslim boy and Muslim girl observed that ".....the importance of being muslim is that under Muslim Personal Law a girl is entitled to be married once she attains the age of puberty which unless contrary is shown is taken to be 15 years." It has been further observed that ".....until the time she is married it would be her parents that would be the guardian but once she is married and the marriage is accepted, it would be her husband who become

the guardian”

Learned counsel submits that now after return the daughter of the informant has gone under parentage influence and she has made her statement under Section 164 Cr.P.C. stating that she was kidnapped and the petitioner had established physical relationship with her but such statement of the daughter of the informant may be seen in the totality of the circumstances for purpose of grant of regular bail to the petitioner.

Learned counsel for the petitioner submits that the petitioner is always ready and willing to live with opposite party no. 2 as husband and wife. The relationship which she also admits in her affidavit.

Mr. Giri, learned counsel representing opposite party no. 2 has opposed the prayer for regular bail of the petitioner. It is his submission that the daughter of the informant was minor having less than 18 years of age, therefore, the petitioner could not have contracted marriage with her and the affidavit of the daughter of the informant might have been obtained under pressure.

Mr. Md. Aslam Ansari, learned A.P.P. for the State has opposed the prayer for regular bail of the petitioner.

Considering the facts and circumstances of the case, in the peculiar nature of the matter in which the F.I.R. has been lodged after 11 days even after knowing that the daughter of the informant was taken away for purpose of marriage by the petitioner, the girl has returned after about one and half months and 13 days thereafter the 164 Cr.P.C. statement has been made and at this stage the petitioner has remained in jail for over one year, investigation against him is complete but the trial is not likely to take place in near future, this Court directs release of the petitioner 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 Additional Chief Judicial Magistrate-VIth, Katihar in connection with Mansahi P.S. Case No. 53 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that during the trial the petitioner shall not try to contact the informant's family and the informant's daughter in particular.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of

bail bond of the petitioner. 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.

(Rajeev Ranjan Prasad, J)

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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'.