

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16193 of 2021

Arising Out of PS. Case No.-98 Year-2020 Thana- MAHILA P.S. District- Araria

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Gulkhan, S/o Irshad Ali, R/o village- Garaiya, Ward No. 06, P.S.- Kursakanta
(Kuwari O.P.), District- Araria

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rahbana Khatoon, D/o Md. Shabir, R/o village- Garaiya, Ward No. 12,
P.S.- Kursakanta (Kuwari O.P.), District- Araria

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Ranjan, Advocate
		Mr. Majid Mahboob Khan, Advocate
For the Opposite Party/s	:	Mr. Shyam Kumar Singh, APP
For Opp. Party No. 2	:	Mr. Ajit Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

15 26-07-2022 Learned counsel for the petitioner is permitted to

remove the defect(s), as pointed out by the office, within a

period of four weeks from today.

Heard Mr. Alok Ranjan, learned counsel appearing on
behalf of the petitioner, Mr. Ajit Kumar Singh, learned counsel
for the informant and Mr. Shyam Kumar Singh, learned APP for
the State.

The petitioner seeks regular bail, who is in custody in
connection with Special (POCSO) Case No. 42 of 2020, arising
out of Mahila P.S. Case No. 98 of 2020, registered for the
offences punishable under Section 376 of the Indian Penal Code
and Section 4 of the Protection of Children from Sexual



Offences Act.

As per prosecution case, it is alleged that the daughter of the informant was in love with her co-villager Gulkhan for the last three months and on the pretext of marriage this petitioner made physical relationship with her daughter due to which she became pregnant of about two months. It is further alleged that when the matter came in the light of the parent, they talked to the petitioner for marriage, but he refused. A Panchayati was also held, but they disobeyed the decision of the Panchayati.

It is submitted by the learned counsel appearing on behalf of the petitioner that from the allegation made in the F.I.R. it is evident that there was love affair between both the petitioner and the victim girl and even as per sake of argument, though not admitted, there was a consensual relationship between both of them. It is further submitted that from the F.I.R. it is evident that the occurrence took place three months prior to the institution of the case and the very institution of the F.I.R. appears to be manifested on account of refusal of marriage by the petitioner with the victim. It is also submitted that pursuant to the direction of this Court twice Medical Board, headed by the Civil Surgeon-cum-Chief Medical Officer, Araria has been



constituted and from the report it appears that the age of the victim girl was found to be in between 18-20 years and moreover the pregnancy test was found negative. It is next submitted that even after the investigation, charge-sheet has not been submitted in any of the Penal provision under the Protection of Children from Sexual Offences Act and the charge-sheet has been submitted only under Section 376 of the Indian Penal Code. It is lastly submitted that this petitioner is in custody since 10.10.2020 having man of fair antecedent and he is ready to give undertaking that he will fully cooperate in the trial.

Learned counsel appearing on behalf of the petitioner also relied upon one of the judgment of the Hon'ble Supreme Court in the case of **Deelip Singh @ Dilip Kumar vs State Of Bihar**, since reported in **(2005) 1 SCC 88**.

On the other hand, learned counsel for the Informant vehemently opposes the bail application and submits that the statement of the victim was recorded under Section 164 of the Cr.P.C. and in her statement she has categorically stated that she was subjected to rape by this petitioner and her age has been assessed about 16 years. It is also submitted that after the said occurrence, the victim requested for marriage to the petitioner



but he elude to do marriage, then Panchayati was held and thereafter this petitioner has demanded Rs.1,00,000/- (One lakh) and other valuables.

Learned counsel for the State also opposes the bail application and submits that from the materials available on record, it appears that the girl was subjected to rape on the pretext of solemnization of marriage.

Having considered the submissions made on behalf of the parties and considering the materials especially the report of the Medical Board, which clearly suggests that the pregnancy test was found negative and the age of the victim appears to be the 18-20 years, as also from the F.I.R. it appears that it is a case of consensual physical relationship, inasmuch as this petitioner is in custody since 10.10.2020 having fair antecedent, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, POCSO Act, Araria in connection with Special (POCSO) Case No. 42 of 2020, arising out of Mahila P.S. Case No. 98 of 2020, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-



(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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