

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9016 of 2022

Arising Out of PS. Case No.-280 Year-2021 Thana- BARH District- Patna

RIKKY KUMAR SON OF LATE JAI NATH SHARMA Resident of Village -
Dhelwangosai, P.O.- Barh, Distt.- Patna.803213

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Lalan Kumar, Adv.
For the Opposite Party/s :		Mr. Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 22-08-2022 Heard learned senior counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner seeks bail in a case registered for the
offence under Sections 366(A) and 376(A)(B) of the Indian Penal
Code and Section 4 of the POCSO Act.

The minor daughter of the informant is stated to have
been kidnapped by the unknown persons.

Learned senior counsel appearing for the petitioner
submits that the petitioner is innocent and has falsely been
implicated in this case only on the basis of suspicion. He further
submits that the entire allegation as leveled in the F.I.R. is against
unknown and there is no recital of name of the petitioner. He
further drawn the attention of this Court towards the statement
of the victim recorded under Section 164 Cr.P.C. in which the



victim girl has specifically stated that the petitioner herein has persuaded her and taken her to Hyderabad where she has been kept in a room by the petitioner who has established physical relation. Learned senior counsel for the petitioner further submitted that the occurrence is alleged to have committed on 14.07.2021 and the victim has returned and reluctantly made her statement before the police as well as the Magistrate on 20.07.2021. From bare perusal of statement of the victim, it is admitted that the petitioner has persuaded the victim which itself goes to suggest that the petitioner and the victim were in talking terms before the alleged date of occurrence and the victim willingly was to left her house with her volition after being persuaded, therefore, It can be said that the victim has not been kidnapped and, accordingly, the allegation of kidnapping against the petitioner is falsified. So far as allegation of establishing forceful physical relation with the victim is concerned, the medical report of the victim does not support the prosecution version as the doctor has not found any internal and external injury on the person of the victim, therefore no case under Section 376(a)(b) of the Indian Penal Code is made out against the petitioner. The petitioner is rotting in judicial custody since 23.07.2021.

Learned A.P.P. for the State has opposed the prayer for bail of the petitioner and submits that though the F.I.R. does not



contain the name of the petitioner but in the statement of the victim, it has clearly surfaced that the petitioner has taken away the victim and according to the statement of the victim, the petitioner has established forceful physical relation with the victim girl. He further submitted that so far as contradiction in medical report and the statement of the victim, as submitted by the learned counsel for the petitioner, is concerned, the veracity of medical report is the subject matter of trial and it should not be taken into consideration, especially at the time of consideration of prayer for bail, more particularly, the occurrence is fully supported by the victim, who is a minor, in her statement recorded under Section 164 Cr.P.C. which is quite sufficient for prosecution of the petitioner in this case. Therefore, the petitioner may not be granted the privilege of bail.

Considering the facts and circumstances of the case and the rival submission of the parties and also the age of the victim, who is minor, this Court is not inclined to grant the privilege of bail to the petitioner. Accordingly, the prayer for bail of this petitioner is rejected.

(Rajesh Kumar Verma, J)

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