

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20877 of 2021

Arising Out of PS. Case No.-482 Year-2020 Thana- CHANDI District- Nalanda

=====

VIJAY MANJHI@VIJAY KUMAR Son of Rajendra Manjhi Resident of
Village - Manoharpur Kachhuara, P.S.- Gopalpur, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Tej Narayan Singh

Mr. Vijay Kr. Sinha

For the Opposite Party/s : Mr. Ajay Kumar Jha, APP

=====

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

7 11-04-2022 The applicant/accused in Crime No.482 of 2020,

registered with Chandi Police Station for the offences punishable

under Section 366(A) of the Indian Penal Code at the instance of

first informant, Radhe Sao, by this application is seeking release on

bail during the pendency of the trial.

Records shows that after investigation of the subject
crime, the chargesheet has been filed for offences punishable under
Section 366 A of the IPC as well as under Section 4 of the POCSO
Act.

Heard the learned counsel appearing for the
applicant/accused. He argued that the FIR itself if read along with
the statement under Section 164 Cr.P.C. of the victim makes it clear
that the alleged victim had left the house on her own accord and
therefore, no criminal liability can be fasten on the applicant. It is
further argued that the applicant is behind bars from 10.11.2020 and



the investigation reveal that victim was 18 to 19 years of age. Therefore, the POCSO has no application.

The learned Prosecutor assisted by the learned counsel for the first informant opposed the application. They placed reliance on the statement of the victim under Section 164 Cr.P.C. In addition the learned counsel for the first informant argued that the charge-sheet has not been filed under proper punishing section of the IPC as well as POCSO Act. He submits that it ought to have been filed under Section 376 of the IPC as well as under Section 5 of the POCSO Act.

I have considered the submissions so advanced and also perused the materials placed on record.

The first informant on 13.10.2020 had reported the police that his minor female child aged about 16 years had left the house for purchasing but she did not return. During the course of investigation, the victim female child came to be recovered while in the company of the present applicant on 10.11.2020. During the course of investigation, birth certificate of the victim female child was collected by the Investigating Officer and it shows her date of birth as 18.08.2006. However, her medical examination shows that she was aged about 18-19 years.

The statement of the victim female child made before the



learned Sub Divisional Judicial Magistrate shows that when she left the house, the applicant met her and had forcibly taken her to Patna and had committed wrong acts with her and had tortured her. Ultimately the Investigator had recovered the victim from the company of the applicant.

At the time of framing of the charge, it will be the duty of the learned trial Court to examine the material on record and to frame the charges for the offences in respect of which there is prima facie material on record. Filing of the charge-sheet under the Sections which the Investigating Officer deems fit to level against the applicant is of no consequences.

The material collected by the prosecution prima facie shows that the victim was a minor female child at the time of commission of offence. She was kidnapped by the applicant and was subjected to sexual harassment by him, as seen her statement before the learned Sub Divisional Judicial Magistrate, hence, no case for grant of bail is made out.

Application is accordingly rejected.

(A. M. Badar, J)

sanjeev/-

U		T	
---	--	---	--

