

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22882 of 2021

Arising Out of PS. Case No.-188 Year-2020 Thana- DAGARUA District- Purnia

MD. AKHTAR Son of Late Jalil @ Shekh Jalil Resident of Village -
Parbailee, P.S. - Kadawa, District - Katihar

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Suresh Prasad Sah, Advocate

For the Opposite Party/s : Mr.Asha Devi, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 28-01-2022 Heard the parties through video conferencing.

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

Let the defect(s) be removed within two weeks of the
complete start of the physical Court in normal course.

The petitioner, who is in custody since 23.10.2020,
seeks regular bail in connection with Special (POCSO) Case
No. and CIS No. 78 of 2020, arising out of Dagarua P.S. Case
No. 188 of 2020, for the offence punishable under Section 376
of the Indian Penal Code and Section 4 of POCSO Act.

The prosecution case, in brief, is that the informant,
aged about 15 years, had gone to the house of her Khala,
namely, Noorso Khatoon at village- Parbailee and stay about a
month. It is alleged by the informant that Md. Akhtar used to



meet and loved her and expressed his desire to marry. It is further alleged that after one month she returned to her father's house and then Md. Akhtar came to her house (Singhiya Thathol) and called her by telephone and offered to marry with the victim girl, but suggested him to talk with her father regarding proposal of marriage. It is alleged that while she was alone with the petitioner, he started pressing vital part of her body to which she objected. The petitioner did not restrain himself rather he took out a knife from waist and pushed the victim on the ground and committed rape upon which she raised alarm, the petitioner tried to flee away, but he was caught by one Md. Lukman and Sabbir, who were coming with motorcycle.

Learned counsel appearing on behalf of the petitioner submits that no case under POCSO Act is made out against the petitioner as Medical Board has determined the age of victim about 18 years. He further submits that the victim has stated in her statement recorded under Section 164 of the Cr.P.C. that she used to meet with the petitioner, but she had denied the factum of establishing any physical relationship with the petitioner or the petitioner committed rape. However, there is direct allegation against the petitioner that he forced her to indulge in sexual activities, which was seen by the other



persons. In this regard, he submits that just to implicate the petitioner such false case has been made against him, the victim has made such statement under the pressure of her guardian. He further submits that from the Medical Report it is apparent that rape has not been committed and the victim is major. The petitioner is in custody since 23.10.2020.

Learned A.P.P. for the State has opposed the prayer for grant of bail to the petitioner and submitted that in course of investigation, it has come that petitioner and the victim having relationship and the love affair cannot be denied. He has referred to paragraph Nos. 48 to 50 in which the independent witnesses in their statement under Section 161 Cr.P.C. have stated that as the Panchayati failed the present case has been lodged against the petitioner.

Considering the aforementioned facts and circumstances of the case as well as allegation made in the F.I.R. and the material, which has come in course of investigation prima facie it appears that there is love affair between the petitioner and victim, who has medically been assessed to be about 18 years and the allegation of committing rape is not reported by her in the statement under Section 164 of Cr.P.C. and the medical report. However, I am of the considered



opinion, having regard to submission made at bar, that accused intends to marry victim girl and considering the age of the petitioner and the statement of witnesses mentioned in paragraph No. 48 to 50 of the case diary under Section 161 and the father and mother of the victim girl be taken by him and after considering the same the learned Special Judge, POCSO Act, without being influenced by the earlier order passed, depending upon the nature of the evidence on record may pass a fresh order.

With the aforesaid observations and directions,
this application is disposed of.

(Purnendu Singh, J)

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