

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28238 of 2021

Arising Out of PS. Case No.-515 Year-2020 Thana- SIKARPUR District- West Champaran

MUNNA SINGH @ MUNNA PATEL Son of Ramashankar Patel @
Ramashankar Ray Resident of Village - Hardiya, P.S.- Raghunathpur (O.P.),
District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ansul, Advocate

For the Opposite Party/s : Mr. Binod Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

8 31-03-2022 Heard learned counsel appearing on behalf of the
petitioner and learned APP for the State.

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

Petitioner, who is in custody since 28.12.2020, seeks
regular bail in connection with Shikarpur P.S. Case No. 515 of
2020 dated 22.09.2020 registered for offences punishable under
Sections 363, 366(A), 370(A) of the Indian Penal Code, Section
05 I.T.P Act and 8/12 of the POCSO Act.

Prosecution story in brief is that one Shiv Sharan Sah
@ Dev Sharan Sah lodged a complaint before SHO,
Narkatiaganj P.S. that petitioner who is his tenant had
established good relations with his family and he was residing in



his house since last four years during which period he allured/enticed his minor daughter namely, Muskan Kumari, aged about 16 years. On 19.09.2020, her daughter was found missing. Upon search she could not be found and on suspicion against the petitioner that he has kidnapped his daughter, the present case has been lodged.

Learned counsel appearing on behalf of the petitioner submits that victim girl after coming back to home gave her statement under Section 164 Cr.P.C. in which she had made certain allegations against the petitioner but she had not made complaint about any physical assault or sexual assault to have been committed by the petitioner. The victim had gone under medical examination and her age was determined by the team of doctors to be between 17 to 19 years and in this regard he has relied upon a recent judgment of Apex Court passed in Criminal Appeal No(s) 1395 of 2015. In paragraph nos. 6 and 7, the Apex Court has observed *inter-alia* as follows:

On the other hand, we have on record the evidence of Dr. Neelam Gupta (P.W.8) a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

While it is correct that the age determined on the basis of a radiological examination may not be accurate



determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

He has also placed reliance on a Delhi High Court's judgment passed in CRL. REV. P. 195 of 2018 where also the question that arose for consideration was as to whether, while determining the age of the victim, the benefit of doubt in age estimated by the bone ossification test is to go to the accused or the victim. The Delhi High Court, relying upon several judicial pronouncements, has concluded that the law is well settled in this regard, benefit of doubt, other things being equal, at all stages goes in favour of the accused.

In the present case, the age of the victim has been determined to be between 17 to 19 years. Petitioner has clean antecedent and he is in custody since 28.12.2020.

Learned A.P.P., for the State has opposed the prayer for grant of bail to the petitioner.

Without going into the merits of the case, the petitioner above named, is directed to be enlarged on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the



satisfaction of learned 7th Additional District and Sessions Judge-cum-Special Judge, POCSO, West Champaran(Bettiah) in connection with Shikarpur P.S. Case No. 515 of 2020 dated 22.09.2020 subject to the following conditions:

(i) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(ii) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(iii) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(iv) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bond.

(Purnendu Singh, J)

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