

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41354 of 2021

Arising Out of PS. Case No.-12 Year-2020 Thana- KASIMBAZAR District- Munger

CHHOTU KUMAR S/O GOPI SAHNI RESIDENT OF MOHALLA-LALLU
POKHAR, PS-KASHIM BAZAR, DISTRICT-MUNGER

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Jyoti Ranjan Jha, Advocate.

For the Opposite Party/s : Mr.Dr.Mrityunjaya Kr.Gautam, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 21-02-2022 Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

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

The petitioner, who is in custody since 28.12.2020,
seeks regular bail in connection with Kashim Bazar P.S. Case
No. 12 of 2020 for the offence punishable under Section
366A/34 of the Indian Penal Code and Section 8 of the POCSO
Act.

The allegation is of kidnapping of the minor daughter
of the informant by the petitioner and his family members.

Learned counsel appearing on behalf of the petitioner
submits that the petitioner is innocent and he has falsely been



implicated in this case merely on suspicion. He further submits that the date of occurrence is 20.12.2019 and the F.I.R. was lodged on 04.01.2020 after a delay of 15 days without any reasonable explanation. The victim girl in her statement under Section 164 Cr.P.C. has not alleged either with respect to any sexual assault or physical assault against the petitioner. Petitioner has clean antecedent and he is in custody since 28.12.2020.

Dr. Mrityunjaya Kumar Gautam, learned A.P.P. for the State submits that there is direct allegation against the petitioner who had kidnapped the minor daughter of the informant and forcibly taken her to Delhi and after four months she came back on her own as it would appear from Paragraph No.32 of the case diary. She was produced before the Magistrate where her statement under Section 164 Cr.P.C. was recorded. On perusal of her statement under Section 164 Cr.P.C., it appears that there is no allegation of sexual assault or physical assault committed by the petitioner and on perusal of the medical report, it appears that she has refused to get herself examined before the Medical Board as per her choice. Considering the nature of allegation, this is not a fit case in which the petitioner should be released on bail.



Considering the above facts and circumstances of the case, age of the petitioner, statement of the victim girl under Section 164 Cr.P.C wherein she has not made any specific statement with respect to either she was sexually assaulted by the petitioner or petitioner has physically assaulted her as well as her specific denial to be examined before the Medical Board on her own, prima facie, it cannot be established that any sexual assault was committed by the petitioner, it appears that the victim girl has simply stated that because the petitioner had taken her along with him against her wishes, she refused to stay with him and on her own she stayed at Delhi with one of the co-villager (aunty) and thereafter she returned back to her parental home on her own.

Considering the age of the petitioner and nature of crime, this Court finds that both the accused persons were in love affairs and this a platonic affair which appears to have not resulted into any sexual assault and the family of the petitioner has faced trauma as a result of such false implication and there is every likelihood that they might tend to reconcile with the same by blaming themselves or convincing themselves that the element of consent was in fact present.



In the present case, the offence in question is purely individual / personal in nature. It involves the petitioner and the victim girl and their respective families only. It also involves future of two young persons who are still in their early twenties.

Accordingly, the present application is disposed of.

The court below is directed to take statement of the victim girl as well as her father and mother, father and mother of the petitioner as well as independent witnesses whose statement have been recorded in the case diary.

Considering the fact that there is no allegation of either sexual assault or physical assault against the petitioner, the court below shall pass a fresh order without being prejudiced by its order dated 21.06.2021 giving some specific findings and if he finds that some amicable relationship has entered into between the petitioner and the victim girl and they are ready to live together, the petitioner shall be released forthwith on such terms and conditions as fixed by the court below.

(Purnendu Singh, J)

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