

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41362 of 2021

Arising Out of PS. Case No.-328 Year-2020 Thana- KRITYANAND NAGAR District-
Purnia

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PRADEEP KUMAR @ MANISH YADAV @ MANISH KUMAR YADAV
S/o Ramji Yadav R/o village- Gokulpur/Gokhulpur, P.S.- Krityanand
Nagar/K. Nagar, District- Purnea

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sunita Kumari D/o Heman Mandal R/o village- Gokhulpur, P.S.- K. Nagar,
Distt.- Purnea, Pin Code- 854203
3. Heman Mandal S/o Bhuthu Mandal R/o village- Gokhulpur, P.S.- K. Nagar,
Distt.- Purnea, Pin Code- 854203

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate
		Mr. Mritunjay Kumar, Advocate
For the Opposite Party/s	:	Mr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

04-04-2022 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 19.03.2021,
seeks regular bail in connection with Spl. (POCSO) Case No. 75
of 2020, arising out of K. Nagar P.S. Case No. 328 of 2020, for
the offence punishable under Sections 376/34 of the Indian
Penal Code and Section 4/8 of POCSO Act, 2012.

The prosecution story, in brief, is that the petitioner
and the other accused confined the victim girl in a thatched



house for three days, where they sexually assaulted her. The local people rescued the victim girl.

Learned senior counsel appearing on behalf of the petitioner submits that the alleged incident took place on 30.05.2019, whereas the complaint was lodged on 28.06.2019 after one month of the occurrence. There is variation in the statement of the victim. The victim in her statement under Section 161 Cr.P.C. has stated that she is married and she does not want to pursue the case. However, in her statement under Section 164 of the Cr.P.C recorded on 11.01.2021, she had developed her case and has supported the allegation made in the compliant petition that petitioner and co-accused Niranjana Yadav sexually assaulted her for three days. There is contradiction between two statements made by the victim. The real story is that the parents of both the parties were on inimical terms, which has led to filing of a false case against the petitioner and co-accused. He further submits that victim was medically examined and her age has been assessed between 18 to 19 years. The petitioner has made specific statement in paragraph No. 12 of the bail application that the victim is already married and has filed malicious and false case due to enmity between the parents of the parties. He further points out that the very allegation has been made by the victim herself, which was not objected by the Court below while referring the same under Section 156 (3) Cr.P.C.

The learned A.P.P. has vehemently opposed the prayer for



grant of bail to the petitioner and submits that as per the medical report submitted by the Medical Board consisting of a team of doctors had determined the age of victim girl to be 18 to 19 years.

This Court vide order dated 20.01.2022 had directed the petitioner to add the victim as well as her father namely Heman Mandal as O.P. No.2 and 3 and issue notice. The steps were taken by the petitioner, but the complainant and her father did not appear. A reminder was also sent on 21.02.2022. It has been reported that notices could not be served upon O.P. Nos.2 and 3 as O.P. No.2 has gone to Madhepura, whereas O.P. No.3 has moved to Punjab owing to work. Taking into consideration the aforesaid fact the case was further adjourned for a week for appearance of the O.P.No.2.

Considering the aforementioned facts and circumstances of the case, prima facie, it appears that there is delay in lodging the complaint and there are contradiction in statement of the victim girl made under Section 161 Cr.P.C. as well as Section 164 Cr.P.C. The petitioner has made specific statement in para 12 of the bail application that complainant / informant had married to one Nand Kumar Mandal, son of Jaitu Mandal, resident of village-Dakiya, P.S. and District-Araria on 27.02.2019 much prior to the alleged date of occurrence i.e 30.05.2019. The victim is the complainant. The medical report confirms the fact that the age of victim has been assessed to be 18 to 19 years. In absence of any D.N.A. matching of the fetus,



it cannot be determined as to whether she had conceived from petitioner. In paragraph No. 22 of the case diary, she has stated that she has already married. In such circumstances, this Court directs the Court below to enlarge the petitioner on provisional bail on such terms and conditions, which the Court deems fit and proper. The Court below is further directed to take statements of the mother/father of the complainant as well the complainant and if it found that the above submissions of the petitioner are convincing, the provisional bail of the petitioner shall be confirmed on such terms and conditions as fixed by the Court below.

It is made clear that if the victim as well as her mother and her father declined to appear before the Court below within a period of three months even after notice to them, the provisional bail of the petitioner shall be confirmed on such terms and conditions without any further delay.

With the above observations and directions, the present bail application is disposed of.

(Purnendu Singh, J)

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