

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32839 of 2022

Arising Out of PS. Case No.-39 Year-2022 Thana- GAUNAHA District- West Champaran

NITISH KUMAR S/o Sri Omnarayan Sah Resident of Village- Pipra, P.S.-
Gaunaha, District- West Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate

For the Opposite Party/s : Mr. Madhura Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 02-09-2022 Heard learned counsel for the petitioner and learned
APP for the State through video conferencing in view of the
COVID 19.

Let the defect(s), if any, as pointed out by the office
be removed within four weeks.

The petitioner is in judicial custody in connection
with Gaunaha P.S. Case No. 39 of 2022 for the offences under
Sections 366A/34 of the Indian Penal Code and Section 8 of the
Protection of Children from Sexual Offences Act, 2012 (for
brevity, POCSO Act).

The allegation against the petitioner in the FIR is of
kidnapping the minor daughter of the informant.

Subsequently, the victim girl was recovered and
made statement under Section 164 of the Cr.P.C. in which she



stated that she had gone with the petitioner on her own will with further statement that she had twice fled away with the petitioner. It was her last statement that she wants to live with the petitioner.

Learned counsel for the petitioner submits that only because her age has been recorded as 14 years in the said statement under Section 164 of the Cr.P.C. that the petitioner is suffering in the matter being in custody since 19.02.2022 (as stated in paragraph-9 of the bail application). He lastly submits that on the one hand the informant's side declares the victim girl as minor, on the other hand, to his knowledge the family of the petitioner have solemnized her marriage. The paragraph-7 of the bail application read as under:

“7. that, in fact, the real age of the victim has been concealed and suppressed only with a view to bring the case within the ambit of POCSO Act, whereas the petitioner has come to know that on 27.04.2022, so-called victim Anita Kumari has been married to one Pinto Mahto son of Bhada Mahto, resident of village-Pipardarhi, P.S. Sherwa (Nepal) without her consent, and now she is residing at her matrimonial home.”

Taking into account the aforesaid facts including the



statement made under Section 164 of the Cr.P.C. by the victim girl coupled with the narration made in paragraph-7 of the bail application as also that he is in custody since 19.02.2022, this Court is inclined to grant him the privilege of bail.

It is however made clear that if it is found that a false statement has been made in paragraph-7 of the bail application, the bail order shall become infructuous.

Let the petitioner be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of like amount each to the satisfaction of 7th Additional Sessions Judge cum the Special Judge, POCSO Act, West Champaran at Bettiah in connection with Gaunaha P.S. Case No. 39 of 2022, subject to the following conditions.

(i) one of the bailor should be the family member of the petitioner, who shall provide official document to show his/her *bona fide*;

(ii) the petitioner shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reasons will entail his cancellation of bail by the Trial Court itself;

(iii) he shall in no way try to induce or promise or threat the witnesses or tamper with the evidence, failing which



the State shall be at liberty to take steps for cancellation of his bail bonds.

With the aforesaid observations, the bail application is allowed.

(Rajiv Roy, J)

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