

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42040 of 2021

Arising Out of PS. Case No.-189 Year-2020 Thana- KARPI District- Jehanabad

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Sujeet Kumar Son Of Sri Mahendra Singh Resident Of Village - Bandhopur,
P.S.- Karpi, District - Arwal (Bihar) Petitioner

Versus

The State of Bihar Opposite Party

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Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Dipak, Advocate
For the Opposite Party/s : Mr. Rajesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 23-02-2022 Learned counsel for the petitioner undertakes to remove all the defects pointed out by the Stamp Reporter within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Rajesh Kumar, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Special POCSO Case No. 05 of 2021 arising out of Karpi P.S. Case No. 189 of 2020 registered for the offences punishable under Sections 366(A) & 376 of the Indian Penal Code and Section 4 of POCSO Act. He has no criminal antecedent and is in custody since 13.09.2020.

As per the prosecution story, this petitioner along with other three persons armed with desi katta entered into the house of the informant after climbing on the roof, they went inside the room of the victim girl aged about 15 years and forcibly took



her away. The informant alleged that on cry when he went in the room and protested, the accused persons assaulted him with fist and slap and one of the accused pointed katta on the head of the daughter of the informant and took her away by a motorcycle. The informant went to police station in the morning.

Learned counsel submits that it is a case of love affair which has been admitted by the victim girl while making her statement under Section 164 Cr.P.C. The Medical Board has examined her and she has been found between 18 and 20 years of age. Learned counsel has relied upon the three Judges Bench decision of the Hon'ble Supreme Court in the case of **Rajak Mohammad Vs. State of Himachal Pradesh** reported in **(2018) 9 SCC 248** (paragraph 8 & 9).

Learned APP for the State has though opposed the prayer for bail of the petitioner but does not controvert that the victim girl in her statement under Section 164 Cr.P.C. stated that she had gone with the petitioner on her own volition and the Medical Board has also found her major.

Learned APP though submits that according to the school certificate she is not major but at the same time, the Medical Board has given its opinion that the victim is major.

Considering the submissions and the materials placed



on the record particularly the statement of the victim girl recorded under Section 164 Cr.P.C. and the Medical Board creating a dispute over the age of the victim girl and declaring her major between 18 and 20 years, the petitioner who has otherwise no criminal antecedent, investigation against him is complete and has remained in custody for over one and half year, following the observations of the Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra) in paragraph '8' and '9' which are quoted hereunder:

“8 On the other hand, we have on record the evidence of Dr. Neelam Gupta (PW 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.

9. While it is correct that the age determined on the basis of a radiological examination may not be an 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 the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

this Court directs release of the petitioner above named on bail on furnishing of bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learend Additional



Sessions Judge-VI-cum-Special Court POCSO, Jehanabad in connection with Special POCSO Case No. 05 of 2021 arising out of Karpi P.S. Case No. 189 of 2020, subject to the condition as laid down under Section 437(3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take steps for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

The application stands allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

