

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44192 of 2021

Arising Out of PS. Case No.-466 Year-2019 Thana- KUDHNI District- Muzaffarpur

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ROHIT KUMAR @ ROHIT KUMAR DAS, S/O MAHESH DAS R/O-
KUDHANI TOLA, P.S.-KUDHANI, DISTRICT-MUZZAFFARPUR.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate.
		Mr. Yash Singh, Advocate.
For the Opposite Party/s	:	Mr. Anand Mohan Prasad Mehta, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 11-03-2022 Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State in virtual Court.

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

The petitioner seeks regular bail in connection with
Kudhani P.S. Case No. 466 of 2019 for the offence punishable
under Sections 341, 323, 354B and 509 of the Indian Penal
Code and Section 4 of the POCSO Act. After investigation
Chargesheet was submitted under Sections 8 and 12 of the
POCSO Act.

The petitioner who is aged about 20 years has been
alleged to have pushed the victim who was riding her bicycle



with his motorcycle and also had threatened her of committing rape at an isolated place because her father used to make complaint against him.

Learned senior counsel appearing on behalf of the petitioner submits that the victim as well as the petitioner are known to each other and are of very tender age. So far as the present petitioner is concerned, petitioner is just an emerging adult aged about 20 years and has just passed his teenage. From the F.I.R. itself, there is no allegation of any physical assault or sexual assault to have been committed by the petitioner. At this tender age, the youth may have some infatuation for the girl for whom he has some platonic love affair. The said fact appears from the statement of the victim made under Section 161 as well as Section 164 Cr.P.C. in which she has admitted that she used to read along with her friends and while she was returning from tuition, the petitioner pushed her and had torn her clothes because her father used to make complaint against the petitioner. She has further stated that the petitioner also used to tease her sister. This variation in the allegation made in the F.I.R. as well as the statement made under Sections 161 and 164 Cr.P.C. totally demolishes the prosecution case as set out in the F.I.R. and as such the entire allegation made against the petitioner is



false and concocted. The petitioner is pursuing his academic career, that apart he is helping his father in his business and is in custody since 12.04.2021. Petitioner has also brought on record certified copies of the deposition of the mother, father and brother of the victim girl. Smt. Anita Devi, who is the mother of the victim girl has not supported any of the allegation made in the F.I.R. and has denied the allegation of pushing her daughter by the petitioner. The brother of the victim has also deposed before the court below and in his Examination-in-chief as well as cross-examination, he has denied that no such incidence has taken place. The informant of the present case, father of the victim, has also denied the allegation made in the F.I.R. and he has stated that out of anger he has filed the present F.I.R.

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

Having heard the rival submissions of the parties and the allegation made in the F.I.R. being registered against the petitioner who is just an emerging adult and unaware of the provisions of the POCSO Act, as it stands today, will surely make the act of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing



an adolescent boy who enters into a relationship out of some infatuation due to some platonic love affairs with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy and a minor girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. Such incidents should never be perceived from an adult's point of view and such an understanding will, in fact, lead to lack of empathy.

In the present case, the informant as well as his entire family members including his wife and his son have denied the allegation to have been committed by the petitioner against the victim girl. Even from the bare perusal of the F.I.R., it appears that at the best, the allegation against the petitioner is of teasing and merely pushing the victim from her bicycle. The victim in her statement under Section 164 Cr.P.C. has not made any allegation of sexual assault to have been committed by the petitioner rather it appears under the influence of her parents she has developed her case that the petitioner had torn her clothes and had threatened to rape her. In such circumstances, if an adolescent boy is allowed to remain in custody in a case of this



nature will be persecuted throughout his life.

The father after making such complaint who was examined as PW-1 also did not support the case of the prosecution and the mother of the victim who was also present at the time of hearing in her deposition she has also not supported the allegation made against the petitioner. Even the brother of the victim has denied the allegation made in the F.I.R.

It is imperative for the Court to draw conclusion that the action of the petitioner, at the best, only be innocuous and as such keeping him as under trial would not be justified and only entail to misuse the provision of the Act. I am of the opinion that the petitioner has made out a case to be released on bail.

The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned 7th Additional Sessions Judge cum Special Judge, POCSO Act, Muzaffarpur in connection with Kudhani P.S. Case No. 466 of 2019, subject to the following conditions:-

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



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

(3) 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.

(4) 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 bonds.

(Purnendu Singh, J)

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