

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43595 of 2021

Arising Out of PS. Case No.-37 Year-2021 Thana- PURNEA SADAR District- Purnia

Abdul Barique, S/o Md. Israil, Resident of Village- Parnmanandpur,
Safruddin Tola, P.S-Sadar (M), District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Sarif, son of late Md. Taslim, resident of Mohalla-Mahendrapur, P.S.-
Muffasil, District- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S. D. Sanjay, Sr. Advocate Mr. Praveen Kumar Agrawal, Advocate
For the Opposite Party/s	:	Mr. Md. Fahimuddin, APP
For the Informant	:	Mr. Nadimul Hasan, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

12 15-07-2022 Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, within a
period of four weeks from today.

Heard Mr. S. D. Sanjay, learned senior counsel
appearing on behalf of the petitioner duly assisted by Mr.
Praveen Kumar Agrawal, Advocate, Md. Fahimuddin, learned
APP for the State and Mr. Nadimul Hasan, learned counsel for
the informant.

The petitioner seeks regular bail, who is in custody in
connection with Sadar (Musfassil) Purnia P.S. case no. 37 of
2021, giving rise to Special (POCSO) Case No. 17 of 2021,
registered for the offences punishable under Section 323/376 of



the Indian Penal Code and Section 4/6 of the Protection of Children from Sexual Offence Act (hereinafter referred to as 'the POCSO Act').

The prosecution case is based upon a complaint filed by the complainant-informant alleging therein that the informant had good terms with the petitioner and they used to visit one another house. On 03.02.2018, when the informant was not present in his house, the petitioner came and after alluring the victim by giving Chocolate, who is aged about 5 ½ years, committed wrongful act with the victim and when she objected, the petitioner threatened to kill her. On her cry, her aunt reached there, whereupon the petitioner fled away from the place of occurrence by showing the fear of knife.

It is submitted by the learned senior counsel appearing on behalf of the petitioner that admittedly the alleged occurrence took place on 03.02.2018, but the complaint petition was filed on 09.02.2018 after a lapse of six days without assigning any reason for delay, whatsoever, and thereafter the present F.I.R. has been instituted on 23.01.2021 after a lapse of about three years from the date of occurrence. Learned senior counsel further submits that the very institution of the F.I.R. is malafide and only with a view to harass and humiliate the



petitioner, as is evident from the fact that before filing of the complaint, the informant had filed another case being Sadar (Mufassil) P.S. Case No. 585 of 2017 for the offences under Sections 364/34 of the Indian Penal Code against Johar Ali and this petitioner alleging therein that accused Johar Ali took away his wife Shahima Khatoon and kept her in the house of the petitioner. Later on, the statement of the wife of the informant, Shahima Khatoon, was recorded and she categorically stated that she voluntarily left the house of the informant, as she was subjected to torture through various means and methods and, as such, she wants to live with the petitioner and thereafter the police after investigation submitted final form showing the petitioner as innocent. In support of the aforesaid contention, the copy of the F.I.R. and the Final Form are brought on record by way of Annexure-2 and 2/A to this application. It is further submitted that the story with regard to the alleged Panchayati, which was taken place before filing of the complaint, which was later on sent to the concerned police station under Section 156(3) of the Cr.P.C. and thereupon the present F.I.R., is also appears to be false because the informant has not mentioned the name of any of the Panches. The falsity of the case is also evident from the fact that it has falsely been stated in the



complaint that his wife went to her Maika at the time of occurrence, though prior to the institution of the complaint case the informant himself instituted an F.I.R. that she has been kept in the house of the petitioner. It is also submitted that in a situation like this where the wife of the informant left his house and started living in the house of the petitioner, the alleged story narrated in the complaint appears to be absurd that informant had good terms with the petitioner and the petitioner used to visit the house of the informant. Learned senior counsel has drawn the attention of this Court towards the statement of the victim recorded under Section 164 of the Cr.P.C. wherein again a false statement has been made, where the victim stated that her mother is already died, however, under the influence and at the instance of the informant (father), the victim supported the prosecution case. It is also submitted that as a matter of fact, the wife of the informant, namely, Shahima Khatoon after getting divorce from her husband (informant) has been living with the petitioner, as husband and wife.

During the course of investigation, the statement of the mother of the victim has been recorded and she stated that no such occurrence as alleged has taken place and this case has been instituted by her ex-husband only with a view to take



revenge and lower down the prestige of the petitioner in the society. Learned senior counsel in the facts of the present case, also relied upon some of the judgments of the different High Courts as well as the Hon'ble Supreme Court. It is submitted that the statement under Section 164 of the Code of Criminal Procedure does not amount to bring substantial evidence for the purposes of criminal law, including the cases concerning the Protection of Children from Sexual Offences Act, 2012 and in support of the aforesaid proposition he relied upon the judgment rendered by the Division Bench of Karnataka High Court in the case of **Hanumantha Mogaveera Vs. The State of Karnataka in Criminal Petition Nos. 2951 and 3000 of 2020**. He further submits that even under the POCSO Act, the statement of the victim is not to be taken to be gospel truth, unless substantiated with due evidence. It is next submitted that even under the POCSO Act, the presumption under Section 29 is not to be ruled out while considering the bail applications, prior to the filing of the charge-sheet. In support of the aforesaid contentions, the learned senior counsel has also relied upon the judgments rendered in the case of **Somasundaram Vs. The State**, reported in **(2020) 7 SCC 722**, **Gulu Santra Vs. State of West Bengal**, reported in **(2020) 3 CALLT 131 (HC)**, **Dillu @ Dilip Kumar**



Swain Vs. State of Orissa reported in (Crl. A. No. 373/2012)
Orissa HC (DB).

It is lastly submitted that though the investigation of the crime is already concluded and the charge-sheet has been submitted in the present case, however, the petitioner is in custody since 03.03.2021, though under the mandate of Section 35 of the POCSO Act, which clearly warrants that the evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded and further Section 35(2) thereof says that the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

On the other hand, learned counsel appearing on behalf of the informant submits that there is specific allegation against the petitioner that he has committed a wrongful act on a small girl and there is sufficient evidence/materials on record to support the prosecution case and moreover the victim has supported the prosecution case and stated in her statement under Section 164 of the Cr.P.C. that this petitioner had committed wrongful act.

Learned APP for the State also supports the



submissions made on behalf of the informant and vehemently opposed the bail application.

Having regard to the submissions made on behalf of the parties and taking into consideration the facts and the materials available on record, which clearly shows that prior to the institution of this case, the informant had instituted another F.I.R. against this petitioner, which allegation was later on found false and the police submitted final form showing the petitioner as innocent and moreover in the present complaint, which was later on sent to the concerned police station and an F.I.R. has been instituted, there are various false statements, which prima facie, shows the malafide conduct of the informant and his vengeance towards the petitioner and further the statement of the mother of the victim, who categorically stated as to under which background of the facts, the present case is filed by her ex-husband, who is father of the victim girl, as also taking into consideration the period of custody of the petitioner, since 03.03.2021, and his fair antecedent. Apart from the fact that this Court also takes into consideration the settled proposition of law that “frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of



there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail”, and moreover it is not the case of the informant that he has any apprehension that the release of the petitioner from custody would cause any hindrance in the trial nor there is any allegation of tampering with the evidence or intimidating the witnesses, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge (POCSO) Act, Purnea in connection with Sadar (Musfassil) Purnia P.S. case no. 37 of 2021, giving rise to Special (POCSO) Case No. 17 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates



without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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