

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52191 of 2021

Arising Out of PS. Case No.-438 Year-2019 Thana- GAYA MUFASIL District- Gaya

Surendra Kumar, S/o Late Mathura Prasad Resident of Village- Mirzapur,
Line, Par, P.S.- Nawada, District- Nawada, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 54184 of 2021

Arising Out of PS. Case No.-438 Year-2019 Thana- GAYA MUFASIL District- Gaya

Poonam @ Poonam Kumari Sinha, W/o- Sanjay Kumar Sinha, Resident of
Village- Akbarpur, P.S.- Jehanabad, District- Jehanabad, At Present R/o
Lakhibagh, P.S.- Mufassil, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 55497 of 2021

Arising Out of PS. Case No.-438 Year-2019 Thana- GAYA MUFASIL District- Gaya

Khusbu Rai, D/o Vashishtha Narayan Rai, Resident Of Village- Narayanpur
Kotwan, P.S- Narhi, Dist- Balia (u.p)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 52191 of 2021)

For the Petitioner/s : Mr. Ansul, Advocate

Mr. Shivnandan Bharti, Advocate

For the Opposite Party/s : Mr. Jai Narain Thakur, APP

(In CRIMINAL MISCELLANEOUS No. 54184 of 2021)

For the Petitioner/s : Mr. Shiva Shankar Sharma, Advocate

For the Opposite Party/s : Mr. Mohammad Sufyan, APP

(In CRIMINAL MISCELLANEOUS No. 55497 of 2021)

For the Petitioner/s : Mr. Shiva Shankar Sharma, Advocate

For the Opposite Party/s : Mr. Mohammad Sufyan, APP



CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 29-08-2022 All the three bail applications arise out of the same police station case, they have been heard together and are being disposed of by this common order.

Learned counsel for the petitioners are permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard learned counsel for the petitioners and learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with Mufasil P.S. Case No. 438 of 2019 (Special POCSO Case No. 103 of 2019) registered for the offences punishable under Sections 376(A)(B)/120B/34 of the Indian Penal Code and Sections 6/10 of the POCSO Act.

The prosecution case is based on a written complaint with accusation that five years old female child was adopted by United States of America based couple from the specialized adoption agency Ecovic Adoption Centre, Gaya, Bihar. After adoption, the adoptive parents found some abnormality in the adopted child and on examination, the adopted child was found sexually harassed. A letter was received from American Embassy making allegation of the victim being sexually abused



and on the said basis, the present case was initiated. On interrogation, the adopted child disclosed about the sexual harassment on her by two persons with the help of ladies. On showing the photographs of ladies and gents of the specialized adoption agency, she identified the photographs of the petitioners.

Learned counsel for the petitioner in Cr. Misc. No. 52191 of 2021 submits that the petitioner is a Government Officer and working as Child Protection Officer and was not an employee of the NGO, but only used to go on call for examination of the children on the date of adoption and he has no business to visit the NGO, unless he was called upon.

The petitioner in Cr. Misc. No. 54184 of 2021 is said to be a social worker and employee of ECOVIC institution and she had been associated with several other institutions in helping hand to the needy people.

The petitioner in Cr. Misc. No. 55497 of 2021 is said to be coordinator of the specialized adoption agency ECOVIC, Gaya, Bihar.

Learned counsels for the petitioners vehemently submits with admittedly the adoption of the victim took place on 19.08.2019, after performing all the legal formalities and the



victim girl was medically examined by Dr. Ashok Kumar Sinha, but he did not find any sign of sexual assault on the victim girl. It is further submitted that the child study report also does not denote that the victim children suffered from any disease, except some eye problem and on being clinically examined, she was found medically fit and the said report has been accepted by the adoptive parents. The American parents had never made any complaint or any instances of sexual assault while they were in India. However, after few months, when they reached United States of America, thereafter a written complaint has been filed. Learned counsel for the petitioners further submits that one of the co-accused, having identical allegation, has already been granted bail by learned co-ordinate Bench of this Court vide order dated 17.08.2021 passed in Cr. Misc. No. 4011 of 2021. They lastly submit that all the petitioners are in custody for about three years and since 08.12.2021, the trial has been kept pending for recording of evidence of adoptive parents of the victim. Learned counsel for the petitioners have taken this Court to the depositions of the charge sheet witnesses and submit that nothing has come in course of trial which, prima facie, suggests the involvement of the petitioners and materials are not sufficient to prove the charges alleged against the petitioners.



On the other hand, learned counsel for the State opposes the bail applications and submits that serious allegation has been levelled and from the record it appears that the petitioners have been identified by the victim girl to be involved in sexual assault.

Before coming to the merit of the case, it is needless to say that while considering the application for prayer of bail, the Court cannot meticulously examine the depositions of the witnesses, which would amount to prejudging the merit of the case.

It is also observed that earlier the prayer for bail of all the petitioners have been rejected on merits and, moreover, the record reveals that all the seven charge-sheet witnesses have been examined and the case is fixed for recording the evidence of adoptive parents only and as per the report submitted by the learned trial Court, it appears that the trial is likely to be concluded within three months, if the evidence of adoptive parents of the victim is recorded. It is also to be noted that one of the similarly situated co-accused, namely, Pawan Kumar, moved before this Court in Cr. Misc. No. 16715 of 2022 and considering the nature of accusation and progress of trial, his prayer for bail has been rejected vide order dated 18.05.2022.



Regard being had to the nature of accusation and severity of the punishment as well as final stage of the trial, this Court is not persuaded to enlarge the petitioners on bail, for the present.

However, if the trial would not be concluded within a period of three months from the date of the receipt of a copy of this order, the petitioners would be at liberty to renew their prayer for bail.

With the aforesaid liberty, all the applications stand dismissed.

(Harish Kumar, J)

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