

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53960 of 2021

Arising Out of PS. Case No.-493 Year-2020 Thana- PATLIPUTRA District- Patna

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Avinash Kumar, Son of Sri Nand Kishore Singh, R/O Village- Hander (Inder),
P.S.- Gaurichak, District- Patna, At Present R/O Mohalla- Mainpura, Gate
No.33, P.S.- Patliputra, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Aaryan Singh, Advocate

For the Opposite Party/s : Mr. Binod Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 25-08-2022 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. Aaryan Singh, learned counsel for the
petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Patliputra P.S. Case No. 493 of 2020 registered
for the offences punishable under Sections 363 and 366 of the
Indian Penal Code.

As per prosecution case, it is alleged that on on
28.12.2020, at about 11.00 AM, her daughter Suruchi Kumari
left her house without giving any information and when the
informant tried to locate her, she could not find her



whereabouts.

Learned counsel appearing on behalf of the petitioner submits that admittedly the victim was found missing on 28.12.2020, but the present F.I.R. was lodged on 31.12.2020. It is next submitted that the petitioner is not named in the F.I.R., however, later on having come to know about the institution of the F.I.R., both the petitioner and the victim appeared before the police and thereafter the statement of the victim girl was recorded under Section 164 of the Cr.P.C. wherein she has categorically stated that she left her house on her own sweet will and on the request made by the petitioner they have solemnized the marriage and also living with him for about a month and thereafter they voluntarily returned to their home. It is next submitted that the victim was medically examined by the Board of Doctors and her age has been assessed in between 14-16 years. It is next submitted that after solemnization of marriage, the family of both the sides have compromised the matter and a compromise petition in this regard has also been filed before the learned court below. Learned counsel for the petitioner further submits that though there is allegation that the petitioner had made physical relation with the victim and the victim has been found minor by the Medical Board, but at no point of time any



penal provision under the Provision of POCSO Act nor any case under Section 376 of the Indian Penal Code has been added and there is no progress in the trial. The petitioner is in custody since 26.01.2021, having fair antecedent.

On the other hand learned APP for the State vehemently opposes the bail application and submits that the victim is aged about only 14-16 years and as such her consent has no meaning in the eyes of law. It is also submitted that the statement of the victim has been recorded under Section 164 of the Cr.P.C. wherein she admitted that the petitioner had made physical relationship.

Having regard to the submissions made on behalf of the parties and considering the statement of the victim recorded under Section 164 of the Cr.P.C. as well as the fact that till date no penal provision of the POCSO Act as well as Section 376 of the Indian Penal Code has been added and moreover it is the submission of the petitioner that the matter has been compromised between both the family members and families are living altogether cordially, as the informant has stated that the F.I.R. was instituted due to misconception on wrong facts, 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 Chief Judicial Magistrate-XII-cum-Sub-Judge, Patna in connection with Patliputra P.S. Case No. 493 of 2020, 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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