

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17409 of 2023

Arising Out of PS. Case No.-225 Year-2022 Thana- KUSHESHWARASTHAN District-
Darbhanga

=====

Sakaldev Sada @ Sakal Deo Sada S/O Ranjit Sada Resident Of Village-
Bhadol, P.S.- Kusheshwar Asthan, District- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Abdus Shakoor, Advocate
For the Opposite Party/s : Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

2 16-05-2023 The applicant is accused in Crime No. 225 of 2022 registered with Kusheshwar Aasthan Police Station for the offences punishable under Sections 366A and 376(3) of the Indian Penal Code as well as under Sections 4 and 6 of the POCSO Act. By this application he is seeking his release on bail during pendency of the trial.

Heard the learned counsel appearing for the applicant/accused as well as learned Additional Public Prosecutor appearing for the State.

The learned counsel for the applicant argued that in her statement made under Section 164 Cr.P.C., the victim female child has not averred anything adverse against him and she has not even stated that she was enticed by the applicant to



leave her parental house. It is further argued that now investigation of the subject crime is over and further pre-trial detention of the applicant is not warranted.

The learned Additional Public Prosecutor submitted that police statement of the victim female child shows that she was subjected to penetrative sexual assault by the applicant.

I have considered the submissions so advanced and also perused the police report.

The subject crime was registered on the basis of FIR lodged by mother of the victim female child. She alleged that in the night hours of 17.06.2022, the applicant had enticed her minor female child and kept her at his own house. She further averred that upon knowing this fact on 18.06.2022, she had informed the police and with the aid of police she took custody of her daughter.

Though in her police statement, the victim female child has stated about long standing love affairs between her and the applicant which has culminated into physical intimacy in past, qua the incident reported by her mother she stated that as her mother was beating her, on 17.06.2022 she left her parental house and took shelter in the house of the applicant. However, then on the next day her parents along with police



personnel came and took her to her parental house. She has not spoken about any penetrative sexual assault on her during this period.

In her statement made before the learned Judicial Magistrate, under Section 164 Cr.P.C., the victim female child has not spoken about any love relation or physical intimacy between her and the applicant. She has only stated that in the midnight she left her house and took shelter at the house of the applicant where she was kept in a locked room by mother of the applicant. On the next day her parents along with police came and she then joined company of her parents.

Thus, statement under Section 164 Cr.P.C. of the victim female child is not containing any averment regarding penetrative sexual assault on her by the applicant or her love relations in past and her elopement with the applicant on more than one time as averred by her in her statement under Section 161 Cr.P.C. before the police.

Considering this nature of evidence against the applicant, his further pre-trial detention is not warranted and as such the order:-

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 225 of



2022 registered with Kusheshwar Asthan Police Station be released on bail on executing P.R. bond of Rs.10,000/- (Rupees Ten Thousand) on furnishing two sureties of the like amount each to the satisfaction of the trial court i.e., S.D.J.M., Biraul, Darbhanga, with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

(A. M. Badar, J)

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