

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27727 of 2023

Arising Out of PS. Case No.-314 Year-2022 Thana- BARGAINIA District- Sitamarhi

Rakesh Kumar S/O Vijay Sah Resident of Village- Nandwara, Ward No.- 05,
P.S.- Bairstania, District- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sumit Jha, Advocate
For the Opposite Party/s : Dr. Navin Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 12-07-2023 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with Bargainia
P.S. Case No. 314 of 2022 registered for the offence under
Sections 376, 511, 506/34 of the Indian Penal Code and under
Sections 04 and 08 of the POCSO Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 20.01.2023.

The allegation against the petitioner is to make an
attempt to commit rape upon minor daughter of the informant,
aged about 16 years, where after investigation charge-sheet
submitted under Section 376 of the Indian Penal Code and also
under Section 04 of the POCSO Act.



Learned counsel appearing on behalf of the petitioner submitted that petitioner falsely implicated with present case as his love affairs with victim was not accepted by her parents including informant. It is submitted that after recovery, statement of victim girl was recorded under Section 164 of the Cr.P.C., where she categorically stated that she was in love affairs with petitioner and out of her consent she established physical relation on several occasion in last six months with this petitioner, where it is alleged that relation was established on false pretext of marriage. It is further submitted that victim refused to go for medical examination and, as such, further corroboration of allegation in terms of scientific evidence is not possible. It is further submitted that in view of ratio as reported through the case of *Jaya Mala vs. Home Secretary, Government of Jammu & Kashmir and Others (1982) 2 SCC 538* victim appears major as her age as per school certificate is more than 16 years. Learned counsel further relied upon the ratio of Hon'ble Supreme Court in the case of *Ansar Mohammad vs. State of Rajasthan & Anr. 2022 SCC Online 886*, where it has been observed that entering into any kind of corporeal relationship with a person, the pretext of getting marriage can not be termed as rape. While concluding the



argument, it has been submitted that investigation of this case has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP opposes the prayer of bail.

Considering the facts and circumstances as mentioned above and by taking note of statement of victim as recorded under Section 164 of the Cr.P.C., which suggests implication of this petitioner out of false pretext of marriage coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 20.01.2023, accordingly, above named petitioner is directed to be released on bail in connection with Bargainia P.S. Case No. 314 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Session Judge-VI (Special Judge, POCSO), Sitamarhi/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C. with further conditions:

“(i) That the petitioner shall
not interact with victim and her family
members including any prosecution



witnesses in whatsoever manner till the conclusion of trial, failing which, the State shall be at liberty to move before the learned Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) That accused/petitioner shall cooperate in the trial and shall be physically present on each and every date before the learned Trial Court till the conclusion of trial and exemption from physical appearance be allowed by the learned Trial Court, only on medical ground of the petitioner duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.”

The presence of I.O. of this case is dispensed with.

(Chandra Shekhar Jha, J)

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