

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28989 of 2022

Arising Out of PS. Case No.-21 Year-2022 Thana- BAJPATTI District- Sitamarhi

1. Kundan Kumar, aged about 24 years male, Son of Bishwanath Sah @ Vishwanath Sah Resident of village - Sindhiya Khurd, Pokhrai, P.S.- Muffasil, District - Samastipur.
2. Bishwanath Sah @ Vishwanath Sah aged about 45 years, male, Son of Ram Swarath Sah @ Sogarain Sah Resident of village - Sindhiya Khurd, Pokhrai, P.S.- Muffasil, District - Samastipur.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr.Mukesh Kumar Jha, Adv.
For the State	:	Mr.Anand Mohan Prasad Mehta, APP
For the Informant	:	Mr. Uday Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 03-01-2023 Heard learned counsel for the petitioners, learned counsel for the informant and learned Additional Public Prosecutor appearing for the State of Bihar.

The petitioners seek bail in connection with Bajpatti PS Case No. 21 of 2022, registered for the offence punishable under Section 366A of the Indian Penal Code.

The prosecution case in nutshell is that the informant's minor daughter, who was not in a proper mental frame, was found missing on 29-01-2022 and, on enquiry, it has been revealed that petitioner No.1 has taken her away.

Learned counsel for the petitioners submits that as per the Birth certificate issued by the Government of Bihar, the victim was only 18 days younger than her age of majority. She was in her proper senses and, in her statement, recorded under Section 164 of the Code



of Criminal Procedure (*for brevity 'Cr.P.C.'*), she has not alleged anything against the petitioners. In fact, the statement of the victim reveals that she, on her own volition, had gone with petitioner No.1 to Bangalore. The petitioners are stated to be in custody since 15.3.2022 though they have no criminal antecedents.

Learned APP for the State and learned counsel for the informant have opposed the prayer for bail. They have referred to the statement of the victim recorded under Section 164 Cr.P.C. to show that it is incoherent and is not in sync with the medical report which finds the victim to be six weeks pregnant at the time of her recovery. The victim, as per the First Information Report (*for brevity 'FIR'*) was mentally unstable and, technically, even if the Date of Birth, as per the Government of Bihar Certificate, is taken to be true, she was yet to attain majority. The petitioner No.1 has taken undue advantage of the circumstance.

Considering the rival submissions, this Court would find that the petitioner No.2, who is father of petitioner No.1, has been implicated apparently on account of his relationship with the petitioner No.1. Accordingly, this Court, for the purposes of grant of bail, is inclined to accept the submissions advanced by the petitioners' counsel to this effect on behalf of the petitioner No.2, namely, Bishwanath Sah @ Vishwanath Sah. Prayer for bail of the petitioner No.2 is allowed.

Let the petitioner No.2, namely, Bishwanath Sah @ Vishwanath Sah be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-VI-cum



Special Judge (POCSO) Sitamarhi, in connection with Bajpatti PS Case No. 21 of 2022, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner No.2 who will give an affidavit giving genealogy as to how he is related with the petitioner No.2. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner No.2.

(ii) That the petitioner No.2 will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

This Court would expect that the petitioners' counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

Insofar as the petitioner No.1, namely, Kundan Kumar is concerned, having regard to the submissions based on age and mental state of the victim, this Court for limited consideration of the plea for bail is inclined to accept the submissions advanced by learned APP as well as learned counsel for the informant. His prayer for bail is rejected for the present.

(Madhuresh Prasad, J)

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