

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51310 of 2023

Arising Out of PS. Case No.-185 Year-2023 Thana- NAGAR District- Vaishali

Avishek Gaurav Son Of Late Braj Kishore Rai R/O-Umesh Cinema Road,
P.S.-SADAR Haijpur And Distt.-Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Aditya Prakash Sahay, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 12-09-2023 Heard learned counsel for the petitioner is permitted to make necessary correction in Paragraph No. 1 of the bail petition during the course of the day.

2. Heard Mr. Aditya Prakash Sahay, learned counsel appearing on behalf of the petitioner and learned Additional Public Prosecutor for the State.

3. Petitioner seeks bail who is in custody since 14.03.2023 in connection with Hazipur town P.S. Case No. 185 of 2023, F.I.R. dated 13.03.2023 for the offences punishable under Sections 376, 323, 379, 504 and 506 of the Indian Penal Code along with Section 4/6 of the POCSO Act.

4. According to prosecution case, petitioner is alleged to have committed rape upon the informant on the pretext of



marriage although he was already a family man.

5. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that the allegation as alleged in the F.I.R. is false and fabricated and he has not committed any offence.

6. He further submits that from the bare perusal of the F.I.R., it appears that the allegation against the petitioner is that on the pretext of marriage, petitioner has established physical relation with the victim. He further submits that the victim has stated in her fardbyan that she had no knowledge that the petitioner is married and has a child. He further submits that it appears from Annexure – 2 of the bail petition, which suggest the conversation between the wife of the petitioner and informant, in which she has stated in the Whatsapp chat that she had knowledge that the petitioner is a married person and the allegation against the petitioner is that he has established physical relation with the informant-victim on the pretext of marriage, is false and fabricated. He further submits that POCSO Court vide order dated 22.05.2023 has come to the conclusion on the basis of material available on record that no case is made out under the POCSO Act against the petitioner



and the victim is major.

7. Learned counsel for the petitioner submits that in view of the aforesaid facts, no offence under Section 376 of the Indian Penal Code is made out against the petitioner and there is no allegation against him in the entire F.I.R. that the petitioner has made illicit physical relationship with the informant-victim against her consent. He further submits that the case of the informant is that the petitioner has made illicit physical relation which has been made on the pretext of marriage and the medical report of the victim suggest that she was major and POCSO Court also declared the victim as major. He further submits that from the statement of the victim, which was recorded under Section 164 of the Cr.P.C., it appears that the victim was in physical relationship with the petitioner and there is no allegation that the petitioner has made physical relation with the victim forcibly. He further submits that the police after investigation submitted the charge sheet against the petitioner. The petitioner is in custody since 14.03.2023.

8. The learned Additional Public Prosecutor has vehemently opposed the prayer for bail of the petitioner and submits that there is direct and specific allegation against the petitioner that he has made physical relation with the victim on



the pretext of marriage and the statement of the victim was recorded under Section 164 of the Cr.P.C. in which she has categorically stated that the petitioner has made physical relation with her.

9. Considering the aforesaid facts and circumstances, let the petitioner, above named, 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 Chief Judicial Magistrate, Vaishali at Hajipur, in connection with Hazipur town P.S. Case No. 185 of 2023, subject to the following conditions:-

i. Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

ii. If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

iii. And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his



criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

Aditi

U		T	
---	--	---	--

