

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71543 of 2023

Arising Out of PS. Case No.-547 Year-2022 Thana- DARBHANGA SADAR District-
Darbhanga

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1. ROHIT YADAV @ ROHIT KUMAR YADAV, aged about 24 years, Male
 2. Vikash Yadav @ Vikash Kumar Yadav, aged about 22 years, Male
Both are Son of Dinesh Yadav R/o vill - Kharathua, P.S. - Sadar, Dist. -
Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Sr. Advocate
		Mr. Manish Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

2 08-11-2023 Heard Mr. Rajesh Kumar Singh, learned senior
counsel appearing on behalf of the petitioners and Mr. Ajit
Kumar learned APP for the State.

2. The petitioners seek pre-arrest bail in connection
with Sadar P.S. Case No. 547 of 2022 dated 03.09.2022
registered for the offence(s) punishable under Sections 448, 341,
354(B), 379, 504, 506/34 of the Indian Penal Code and Section
8 of POCSO Act.

3. As per the allegation made in the FIR, two minor
daughters of the informant were sexually assaulted by the
accused persons, named in the FIR, and they have also assaulted
on the head of the victims.

4. Learned senior counsel appearing on behalf of the
petitioners submitted that in accordance with sub-section (5A)



of Section 164 of Cr.P.C., as soon as the commission of the offence is brought to the notice of the police, particularly with respect to offences under Sections 354, 354A, 354B and other sections as enumerated therein, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed.

5. It is his submission that two minor daughters of the informant were treated at D.M.C.H. as per the allegation made in the FIR from 22.08.2022 to 25.08.2022 no steps were taken by the police officer to record their statements either under Section 161 of Cr.P.C. or under sub-section (5A) of Section 164 of Cr.P.C.

6. Learned senior counsel further submits that even the allegation made under Section 8 of POCSO Act is not attracted from the bare perusal of the allegation made in the FIR and in this regard, he has placed the provision of Sections 7 and 8 of the POCSO Act. He emphatically submits that even the allegation under Section 354(B) cannot sustain. He clarified that for offence committed under Section 7 of the POCSO Act relates to sexual assault committed with the minor. The section is self-contained and give definition of sexual assault caused to the victim and punishment for the same has been prescribed in



Section 8 of the POCSO Act. The victims were not examined before the Magistrate to determine their age and the Special Court by failing to abide by the provision of POCSO Act cannot restrict the life and liberty of the petitioners, who are apprehending their arrest.

7. Learned senior counsel further submits that even considering the provisions of Sections 24 and 25, as contained in Chapter VI of the POCSO Act, relating to procedure for recording statement of the child, the same appears to be in consonance with the provision of Section 164(5A) of Cr.P.C.

8. He next submits that even considering the case on merits of the allegation made against the petitioners, it appears that the doctor, who had examined the victims at DMCH, where she was treated from 22.08.2022 to 25.08.2022, has opined that the injury is simple in nature, which has been sustained by two minor daughters of the informant. The injury report further reveals that no injury has been caused on any of the vital part/sexual part of the two minor victims to emphasize on the fact that the offence cannot be said to have been committed under Section 7 of the POCSO Act and, therefore, no penal action as contained in Section 8 of the POCSO Act, can be allowed to be imposed against the petitioners for no guilt.



Learned senior counsel has emphasized on the fact that entire family members have been made accused for the alleged offences under Section 8 of POCSO Act and Section 354(B) of IPC. Petitioners are students and are at their early age and if they are not protected by granting them pre-arrest bail, the same will be failure of justice. Petitioners have clean antecedents.

9. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail and submitted that the allegation made against the petitioners attracts the provision of Section 8 of the POCSO Act, as would appear from the FIR, in which, it has been alleged that repeatedly the accused persons have tried to do wrong with the minor daughters of the informant. He further submits that in light of the amendment brought under Section 438 of Cr.P.C., under which, the present application has been filed for grant of pre-arrest bail, notices are required to be issued to the informant before entertaining the present bail application.

10. Having considered the rival submissions made on behalf of parties as well as taking note of the provision of IPC., specifically Section 354(B) and the provision of Section 164(5A) of Cr.P.C., it appears that the mandatory provision as required under Section 164 Cr.P.C., has not been carried out in



the manner prescribed and there is every likelihood that recording the statement of the victims after long duration of time, the victims can be tutored by the family members and that will cause failure of justice. The provision of Section 7 of the POCSO Act provides that what would be the sexual assault and that relates the intent of the accused to touch the vital part of the minor child and then only section 8 of POCSO Act applies. In the present case, the petitioners are alleged to have molested the two minor girls of the informant, however, injury has not been found, as opined by the doctor, on any of the vital part, specially sexual part of the body of two minor girls of the informant. It appears that the parties have previous enmity and in course of some fierce fight, some injury may have been caused and if two minor daughters of the informant have received any injury then the same cannot be said to be intentional to commit sexual assault upon them.

11. A compromise petition has been filed jointly by the parties before the Special POCSO Court which requires to be adjudicated by the Special POCSO Court, it would be proper that matter be remanded back to the Special Court, POCSO, so that the court may proceed to issue notice to O.P. No.2 and pass order without being prejudiced with the order dated 01.09.2023,



in accordance with law afresh.

12. Considering the complete inaction on part of the police officials and the Magistrate concerned, this Court deprecates the practices by not exercising their jurisdiction well within time. The petitioners, above named, are directed to be released on **provisional** pre-arrest bail, in the event of their arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge (POCSO Act), Darbhanga in connection with Sadar P.S. Case No. 547 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

13. In case, petitioners make out a case to be released on pre-arrest bail before the court below, the provisional bail granted to the petitioners is directed to be confirmed on such terms and conditions as the Special Court deems it fit and proper.

14. With the aforesaid observation/direction, the application stands disposed of.

(Purnendu Singh, J)

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