

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33401 of 2024

Arising Out of PS. Case No.-1196 Year-2023 Thana- KAHALGAON District- Bhagalpur

Rupesh Kr. Mandal @ Rupesh Kumar @ Rupesh Mandal Son of Anil Kr. Mandal Resident of Village- Katoriya, P.S- Rasalpur (Kahalgaon), Dist- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar Patna
2. Subodh Mandal Son of Late Bindeshwari Mandal Resident of Village- Katoriya, P.S- Rasalpur (Kahalgaon), Dist- Bhagalpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Dr. Manoj Kumar, Adv.
For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 19-07-2024 Heard learned counsel appearing on behalf of the

petitioner and learned APP appearing on behalf of the State.

2. The petitioner seeks bail in connection with

Kahalgaon (Rasalpur) P.S. Case No. 1196 of 2023

registered for the offences under Sections 147, 148, 149,

323 and 366(A) of the I.P.C. read with Section 4 of the

POCSO Act.

3. The petitioner named in the F.I.R. and is in

custody since 27.12.2023.

4. The allegation against the petitioner is to kidnap

the minor daughter of informant aged about 14 years for the

purpose of illicit intercourse.

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner has falsely been implicated with present case for the only reason that the relation of victim with petitioner became strained immediately after the marriage. It is submitted that marriage is an admitted position, in view of statement of victim as recorded under Section 164 of the Cr.P.C. It is also submitted that as per allegation available in the F.I.R., it is nowhere surfaced that alleged kidnapping was made to seduce or forced victim as to establish illicit relation with another person. It is also submitted that during trial, both victim and informant were examined, who completely denied the occurrence and specifically stated that petitioner did not commit rape upon her. In support of his submission, learned counsel for the petitioner relied upon the legal report of ***Sat Prakash Vs. State of Haryana & Anr. (2015) 16 SCC 475***. It is also submitted that the age of victim on the basis of radiological examination was ascertained between the age group 14 to 16 years and, therefore, if benefit of $\pm$ two years be given in view of ***Jaya Mala Vs. Home Secretary,***

Government of Jammu & Kashmir, AIR 1982 SC 1297; (1982)2 SCC 538, the victim appears major in this case, moreover, the medical examination nowhere suggests that victim was sexually assaulted.

6. Learned APP appearing on behalf of the State, opposes the prayer for bail and submitted that the allegation against the petitioner is specific as to kidnap the victim and to commit penetrative sexual assault. It is submitted that marriage is subsequent to the offence, as per statement of victim recorded under Section 164 of the Cr.P.C.

7. In view of the facts and circumstances as mentioned above, as the victim herself admitted marriage and matrimonial discord through her statement, as recorded under Section 164 of Cr.P.C., where petitioner is in custody since 27.12.2023, is directed to be released on bail in connection with Kahalgaon (Rasalpur) P.S. Case No. 1196 of 2023 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge (POCSO)-cum-7th Additional District & Sessions Judge,

Bhagalpur/concerned Court, subject to the conditions as
mentioned under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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