

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70377 of 2024

Arising Out of PS. Case No.-148 Year-2024 Thana- KATORIYA District- Banka

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Guddu Kumar Das @ Guddu Kumar, S/o Kuldeep Das, Resident of Village-
Kaljhar, PS- Katoriya, Distt-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Basanti Devi, W/o Suresh Das, R/o village- Kaljhar P.S.-Katoriya, Distt-Banka.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Adv.
For the Opposite Party/s : Mr. Jagdhar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 03-10-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner seeks regular bail, who is in custody
in connection with Katoriya P.S. Case No. 148 of 2024
registered for the offences punishable under Section 96 of the
B.N.S. and under Section 8 of the POCSO Act and the charge-
sheet has been filed under Sections 96 and 65 of the B.N.S. and
under Section 4 of the POCSO Act but the cognizance has been
taken under Sections 87 and 137 of the B.N.S. and Section 8 of
the POCSO Act.

3. Allegedly, the minor grand-daughter of the
informant was enticed away at the hands of the petitioner for the



purposes of marriage.

4. Learned counsel for the petitioner contended that the narratives made in the FIR clearly suggest that both the victim girl and the petitioner had been in love. The first occurrence took place on 05.07.2024 and thereafter the victim girl left her home on 08.07.2024 but the FIR has been instituted on 09.07.2024. It is further contended that the victim girl was immediately recovered and her statement was recorded under Section 183 B.N.S.S., wherein she has categorically stated that she left her house and went to station alone. Further, she went to Andal Station from there to Deoghar alone by train and then she called the petitioner. Thereupon, the petitioner came, however, he refused to marry her, whereupon she insisted the petitioner and solemnized marriage in a temple on 09.07.2024. She has candidly stated in her statement recorded under Section 183 B.N.S.S. that there had no physical relationship with the petitioner.

5. The victim girl was examined by the doctor and her age has been assessed between 14 to 16 years. Adverting to the aforesaid facts, learned counsel for the petitioner drew the attention of this Court to Section 137 of the B.N.S., especially Section 137(B) thereof, that for the purposes to constitute offence under the afore-noted Section, enticement of a child is



necessary but the allegations levelled in the FIR and the materials available on record, especially the statement of the victim clearly suggest that there was no enticement on the part of the petitioner. Even for the purpose of Section 87 of the B.N.S, the ingredients of force is required, which is lacking in the present case. It is lastly contended that be that as it may, now the police after investigation submitted charge-sheet under Sections 96 and 65 of the B.N.S. and Section 4 of the POCSO Act but the cognizance has been taken only under Sections 87 and 137 of the B.N.S. and under Section 8 of the POCSO Act. Now, the petitioner has been incarcerated since 10.07.2024.

5. On the other hand, learned counsel for the State opposed the bail application and submitted that from the materials available on record, it appears that the victim girl is aged about 14 to 16 years and, as such, her consent has no meaning in the eyes of law. The petitioner had all along been with the minor girl and solemnized marriage, hence, his complicity in the present crime cannot be denied.

6. Regard being had to the submissions made on behalf of the parties and considering the statement of the victim recorded under Section 183 B.N.S.S, which has been fully dealt with in the impugned order, suggesting no use of force, enticement or inducement on the part of the petitioner, coupled



with the fact that the investigation of the crime has already been completed and the charge-sheet has been submitted, apart from fair antecedent of the petitioner, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge,, POCSO, Banka in connection with Katoriya P.S. Case No. 148 of 2024, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

- (i) The petitioner will cooperate in conclusion of the trial.
- (ii) He will remain present on each and every date of trial till disposal of the case.
- (iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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