

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72726 of 2024

Arising Out of PS. Case No.-1250 Year-2022 Thana- KHAGARIA District- Khagaria

Amit Kumar Son of Nand Kishor Singh Resident of Village- Marar Uttari
Ward No. 13, P.S.- Morkahi, District- Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Praveen Kumar - 2, S.I. Posted Khagaria Police Station, District- Khagaria Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Santosh Kumar Singh

For the Opposite Party/s : Mr.Pushpa Sinha.1

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 13-11-2024 1. Heard the parties.

2. The petitioner apprehends his arrest in connection with Khagaria P.S. Case No. 1250 of 2022 dated 24.11.2022 registered for the offence under Sections 500 / 501 / 502 of the I.P.C. and Section 23 POCSO Act.

3. As per the F.I.R. the petitioner -Amit Kumar, a press reporter by profession, uploaded news on Dainik Bhaskar Media group by his mobile no. 7004791916 on 23.11.2022 at 13:56 P.M. showing photo of the victim of Khagaria P.S. Case No. 1247 of 2022 registered for the offence under Section 376, 323,



506 I.P.C. and Section 4 POCSO Act.

4. Learned counsel for the petitioner submits that the petitioner has not disclosed the name, address, identity of the victim nor he has disclosed the name and address of the accused person. No offence under Section 500, 501, 502 of the I.P.C. and Section 23 of the POCSO Act is made out against the petitioner. He submits that Police after investigation has submitted final form in favour of the petitioner but the learned Magistrate differing with the police report has taken cognizance under Section 500, 501, 502 I.P.C. and Section 23 POCSO Act against the petitioner and now non-bailable warrant of arrest has been issued by the Special Court against the petitioner.

5. I have heard learned counsel for the parties. The cognizance has been taken by the Special Court for the offence under Sections 500, 501, 502 I.P.C. which are bailable in nature. Insofar as cognizance under Section 23 POCSO Act is concerned, the same is also bailable inasmuch as nature of the offence has not been provided under the POCSO Act and it has to be determined with reference to the Code of Criminal Procedure. Section 31 of the POCSO Act provides that the provisions of Criminal Procedure Code, 1973 will apply to the proceedings before a Special Court including the provisions as



to the bail. As such, the provisions of the Code of Criminal Procedure has to be taken into consideration to determine whether the offence is bailable or not. Part II of the First Schedule of Cr.P.C. deals with the classification of offences under other laws and says that if punishment with imprisonment for less than three years the offence under other laws shall be bailable. Section 23 of the POCSO Act provides a punishment of minimum six months which may extend to one year. As such, Section 23 of the POCSO Act is also a bailable offence.

6. In view of the fact that all the offences against the petitioner are bailable, in my opinion the petitioner is not having apprehension of arrest. Accordingly, the present anticipatory bail application under Section 438 Cr.P.C. is not maintainable. The same is accordingly rejected as not maintainable.

7. However, if the petitioner surrenders and seeks regular bail, the same shall be considered by the Special Court taking into account that all the offences against the petitioner are bailable and grant of bail is a matter of right if the person is ready to furnish surety.

praful/-

(Anil Kumar Sinha, J)

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