

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83952 of 2023

Arising Out of PS. Case No.-284 Year-2023 Thana- KOTWA District- East Champaran

JHUNNA KUMAR SAH @ JHUNNA SAH Son of Dhurp Sah R/o vill -
Banbirwa, P.s. - Kotwa, Distt. - East Champaran

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Suman Devi Wife of Suresh Sah R/o vill - Banbirwa, P.S. - Kotwa, Distt. - East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Shankar Shrivastava, Advocate.
For the State : Mr.Atul Chandra, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 18-04-2024 Heard Mr. Vijay Shankar Shrivastava, learned counsel
appearing on behalf of the petitioner and Mr. Atul Chandra,
learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Kotwa P.S. Case No. 284 of 2023 registered for the offence
punishable under Sections 363, 366(A) and 365/34 of the Indian
Penal Code.

3. As per the allegation made in the F.I.R., the
petitioner is said to have kidnapped the minor daughter of the
informant along with co-accused Munna Sah, Tunna Sah and
Dhruv Sah.

4. Learned counsel appearing on behalf of the



petitioner submitted that in compliance of the order dated 11.01.2024, case diary has come. The victim in her statement recorded under Section 164 Cr.P.C. on 20.09.2023 has deposed that she was in love relationship with the petitioner since three years and she has already married with the petitioner in Bangalore where they have lived together. Learned counsel further submitted that so far as the age of the victim is concerned, the same has been determined on the basis of School Leaving Certificate which is not a valid document for acceptance of the age of the victim in accordance with the Section 94(2) of the the Juvenile Justice (Care and Protection of Children) Act, 2015 and in this regard, he has relied on a judgment of the Apex Court rendered in the case of **P. Yuvaprakash Vs. State Rep. by Inspector of Police, Criminal Appeal No(s). 1898 of 2023 dated 18.07.2023.**

5. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail to the petitioner and submitted that the petitioner don't deserve to be released on bail considering the fact that the victim is minor.

6. Having considered the rival submissions made on behalf of the parties, as well as, specific statement of the victim recorded under Section 164 Cr.P.C. on 20.09.2023, wherein she



has stated that she is in love relationship with the petitioner since 3 years and has gone along with the petitioner on her own and had married with him in Bangalore where both of them resided together. It cannot be considered that she has recorded her statement after having been tutored. She has not complained of any sexual assault in her statement recorded under Section 164 Cr.P.C. From Para-88 of the case diary, it appears that the medical report by the medical board has not been recorded in a clear manner determining the age of the victim. The petitioner has relied, especially on Paragraph Nos. 13 to 17 of the judgment of the Apex Court rendered in the case of **P. Yuvaprakash (supra)**.

7. So far as custody of the victim is concerned, in absence of any opinion of the Medical Board having been recorded in the case diary, I find it proper that the trial court should seek opinion of the Medical Board with regard to the age of the victim.

8. Since the victim has not made any allegation either of sexual assault or of kidnapping against the petitioner rather she has stated that she is in love relationship with the petitioner and had eloped with the petitioner on her own to Bangalore where they performed marriage and started living together, the



petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned 6th Additional Sessions Judge cum Special Judge, POCSO Act, East Champaran, Motihari in connection with Kotwa P.S. Case No. 284 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

(Purnendu Singh, J)

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