

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.866 of 2024

Arising Out of PS. Case No.-228 Year-2023 Thana- RAJPUR District- Buxar

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1. Bachau Yadav @ Pawan Yadav, Son Of Parsidhan Yadav Resident, Of Village- Khiri, Ps- Rajpur, Dist- Buxar
 2. Golu Yadav, Son Of Murma Yadav @ Munna Singh, Resident Of Village- Khiri, Ps- Rajpur, Dist- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar BIHAR
2. Azad Ansari, Son Of Late Jan Mohammad Ansari, Resident Of Village- Khiri, Ps- Rajpur, Dist- Buxar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Opposite Party/s : Mr.Rajendra Singh, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 18-01-2024 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners seek regular bail in connection with Rajpur P.S. Case No. 228/2023 lodged on 14.06.2023 under Section 376D of the Indian Penal Code and Sections 4 and 6 of the Protection Of Children From Sexual Offences Act, 2012.

3. As per the prosecution case, the FIR has been lodged against two named accused persons against whom there is allegation of rape has been made.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have committed no offence. He



further submits that the alleged victim has been recovered by the police and narrated her statement under Section 164 of the Code of Criminal Procedure in which she has disclosed that she was in love with petitioner No.1, namely, Bachau Yadav @ Pawan Yadav. She is known to petitioner No.1 with whom she was in physical contact. It is further submitted that the trial has been commenced and in the trial, the victim narrated her statement and became hostile. The petitioners are in custody since 21.06.2023 having no criminal antecedent.

5. Learned counsel for the State opposes the prayer for bail of the petitioners and submits that the allegation has been levelled under Section 376D of the Indian Penal Code and Sections 4 and 6 of the Protection Of Children From Sexual Offences Act, 2012. He further submits that the age of the victim is less than 18 years, therefore, consent is of no use. He further submits that the incident of establishing physical relationship has been accepted consistently by the victim in 164 Cr. P.C. statement as well as in the evidence during the trial, but even after she was declared hostile.

6. After going through the records, it transpires to this Court, that the victim declared hostile even though she has stated in the evidence that a physical relationship has been



established by petitioner No.1 with the victim and she is a minor. Therefore, the question of presumption shall be there according to the provisions of the Protection Of Children From Sexual Offences Act, 2012. As such, this Court is not inclined to grant bail to petitioner No.1, namely, Bachau Yadav @ Pawan Yadav. Accordingly, his prayer for bail is hereby rejected. However, he would be at liberty to renew his prayer for bail, if the trial shall not be concluded within one year from the date of cognizance.

7. So far as petitioner no.2, namely, Golu Yadav, is concerned, let he be released on bail on furnishing bail bonds of Rs.30,000/- (Rupees Thirty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Act, Buxar, in connection with Rajpur P.S. Case No. 228/2023, subject to the conditions as laid down under Section 437(3) of the Code of Criminal Procedure.

(Dr. Anshuman, J)

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