

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15680 of 2025**

Arising Out of PS. Case No.-369 Year-2024 Thana- BIRPUR District- Supaul

Rupesh Kumar, S/o Yogendra Mandal, R/o village - Shahpur, Prithvipatti,
P.S.- Bhaptiyahi, Kharagpur, Distt.- Supaul.

... .. Petitioner

Versus

1. The State of Bihar
2. Anita Devi, W/o Ashok Singh, R/o Birpur, Kumar Chowk, Ward No. 5, P.S.-
Birpur, Distt.- Supaul.

... .. Opposite Parties

Appearance :

For the Petitioner/s :	Mr. N.K. Agrawal, Senior Advocate Ms. Arpana Kumari, Advocate Mr. Kumar Rajdeep, Advocate Mr. Tejaskar Anand, Advocate
For the Opposite Party/s :	Mr. Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 07-08-2025 Heard learned counsel for the petitioner and

learned Additional Public Prosecutor for the State.

2. The accused/petitioner seeks bail in connection
with Birpur P.S. Case No.369 of 2024 registered for the
offences punishable under Sections 96, 115, 352, 351(2),
3(5) of the Bhartiya Nyaya Sanhita (for short 'B.N.S.').

3. The accused/petitioner is named in the FIR and is
in custody since 03.11.2024.

4. Allegation against the petitioner is to kidnap the
minor daughter of the informant for the purpose of illicit



intercourse or seduced/forced her to enter into marriage with another person.

5. It is submitted by Mr. N.K. Agrawal, learned senior counsel that the statement of victim after recovery was recorded under Section 183 of the BNSS, where she categorically stated that she went with petitioner to Supaul out of her own sweet will and solemnized marriage with him in Supaul court and thereafter, she went together for Delhi. Mr. Agrawal further submitted that upon radiological examination, the victim was found between the age group of 17-18 years and if the benefit of marginal error of plus (+) minus(-) two years be given in terms of **Rajak Mohammad vs. State of H.P. [(2018) 9 SCC 248]** then, certainly, the victim appears more than 18 years on the date of occurrence and, therefore, lodging this case under penal provision of POCSO Act appears *prima facie* not convincing. While concluding argument, it is submitted that the petitioner is a man of clean antecedent and moreover investigation of this case is already completed, for which, charge-sheet has already submitted and, as such, there is no chance of tampering with the



evidence. It is further pointed out by Mr. Agrawal that not even a single prosecution witness has been examined during trial, defying the provision of Section 35(1) and also Section 35(2) of the POCSO Act.

6. Learned APP opposed the prayer for grant of bail to the petitioner. None appeared on behalf of the informant despite of service of notice.

7. In view of aforesaid factual submissions and by taking note of fact as victim after recovery completely negate allegation of kidnapping and rape rather she stated that she solemnized marriage with petitioner out of her own sweet will, coupled with the fact that investigation of this case has already completed, where petitioner remains in custody since 03.11.2024, accordingly, the petitioner, above-named, is directed to be released on bail furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District and Sessions Judge-VI-cum-Special Judge Exclusive POCSO Court, Supaul in connection with Birpur P.S. Case No.369 of 2024, subject to the conditions as laid down under



Section 437(3) of the Code of Criminal Procedure (for short ‘CrPC’)/under Section 480(3) of the Bhartiya Nagrik Suraksha Sanhita (for short ‘BNSS’).

(Chandra Shekhar Jha, J.)

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