

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74911 of 2024

Arising Out of PS. Case No.-196 Year-2015 Thana- BARAUNI District- Begusarai

Govind Chaudhari S/o Upendra Chaudhari R/o Ward no 11, Nagar Parishad
Bihat, P.S- Barauni, Garhara, Distt.- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pankaj Kumar Chaudhari S/o Late Chandrasekhar Chaudhary R/o ward no.
11, P.S. - Barauni, Garhara, Distt. - Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Chhaya Kirti, Adv
For the Opposite Party/s : Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 11-02-2025

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. This application filed by the petitioner being aggrieved by the impugned order dated 23.08.2024 passed by learned Exclusive Special Judge, POCSO Act-cum-Additional Sessions Judge-VI, Begusarai in connection with Barauni (Garhara O.P.) P.S. Case No. 196 of 2015 for the offences punishable under Sections 363 and 366A r/w 34 of the IPC and is pending for trial as Special (POCSO) Case No. 30 of 2024 after framing of charges on 15.04.2024.

3. From the crux of complaint petition it appears that informant being father of the victim aged 13 years (at the time of incident) lodged an FIR being Barauni (Garhara



O.P.) P.S. Case No. 196 of 2015 dated 01.06.2015 alleging that on 30.05.2015 aforesaid petitioner alongwith other co-accused persons have kidnapped the minor daughter of the informant while she was going to school during morning hours of the alleged date of incident.

4. Learned counsel appearing on behalf of petitioner submitted that alleged victim alongwith the petitioner has *suo-moto* surrendered before the learned Court during the course of investigation. It is further alleged that victim was assessed about 17 years. It is also submitted that victim denied her medical examination and an opinion was opined by the medical board that no sexual assault or any sexual crime has been committed upon the victim.

5. It is further submitted by learned counsel that victim was produced before learned Magistrate for recording her statement under Section 164 of the Cr.P.C., wherein she stated that petitioner took her to Delhi and confined her in a flat there. It is also submitted that after recording her statement victim was sent to her parents and subsequently petitioner who *suo-moto* surrendered before the Court was



sent to judicial custody.

6. While travelling over the argument learned counsel submitted that petitioner has categorically stated that few specific questions are necessary to be asked to P.W. 1/victim & P.W. 6/informant for the proper adjudication of trial without which just decision can not be arrived, with regard to alleged offences which occurred in Delhi and qua allegation of sexual assault which made the judicial process to invoke the rigorous provision of POCSO Act against the petitioner.

7. In support of her submissions learned counsel relied upon the reports of Hon'ble Supreme Court as available through **V.N. Patil Vs. K. Niranjan Kumar** as reported in **(2021) 3 SCC 66 & also in Ritesh Tewari & Another Vs. The State of U.P. & Others** as reported in **(AIR 2010 Supreme Court 3823)**.

8. It would be apposite to reproduce the questions which are to be asked from P.W. 1/victim and P.W. 6/informant, which are as under:-

(a) Proposed questions to be asked from P.W. 1/Victim.

(i) Whether she had gone to Delhi earlier prior to the alleged



offence ?

(ii) How could she know that where she was staying was the part of Delhi City?

(iii) What overt act was actually alleged to have been done regarding which she has categorized the overt act as chherkhani?

(iv) Whether she had protested anywhere from Barauni to Delhi while she was allegedly travelling over train or other vehicle?

(b) Proposed questions to be asked from P.W. 6/Informant.

(i) Whether he had gone with the investigating officer to Delhi where the alleged victim was allegedly confined by the accused?

(ii) Whether the informant was further examined by the police after filing the petition?

(iii) Whether the alleged victim remained with them prior to her examination u/S 164 or u/S 161 of the Cr.P.C.?

(iv) Whether he has stated or deposed before this learned court according to the assertions disclosed by the alleged victim to him after her examination u/s 161 and 164 of the Cr.P.C.?

9. It would be apposite to reproduce Section 311 of the Cr.P.C. for better understanding of position of law:-

311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and



examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

10. Question formulated as aforesaid by accused/petitioner appears on material aspects of crime-in-question, which *prima-facie* appears must be answered as to just decision of this case.

11. Accordingly, in view of aforesaid factual and legal discussions learned trial court is directed to examine aforesaid two witnesses on aforesaid points only as mentioned in para no. 8 as above, maximum on two consecutive dates. It is made clear that no adjournment shall be given in this regard and if petitioners failed to examine these two witness on two consecutive days as fixed by learned trial court, no further opportunity shall be given and thereafter the learned trial court may proceed further in accordance with law. Accordingly, impugned order dated 23.08.2024 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Barauni (Garhara O.P.) P.S. Case No. 196 of 2015, pending before learned Exclusive Special Judge, POCSO Act cum Additional Sessions Judge-VI, Begusarai is hereby



quashed and set aside.

12. Hence, this application stands allowed.

13. TCR (Trial Court Records), if any, be returned to the learned Trial Court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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