

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79591 of 2024

Arising Out of PS. Case No.-186 Year-2024 Thana- BAISI District- Purnia

Ajay Kumar Ray @ Ajay kumar S/O Gilhari Ray R/O vill.- Guwagoan, P.S-
Baisi, Dist.- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Lali Khatoon D/O Md. Taufar R/O vill.- Guwagoan, P.S- Baisi, Dist.- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rupesh Kumar, Adv
	:	Md. Ejaz Akhter, Adv
For the Opposite Party/s	:	Mr. Anuj Kumar Shrivastava, APP
For the Informant	:	Mr. Pankaj Kumar Sinha, Adv

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 29-01-2025 Heard learned counsel appearing on behalf of the

petitioner and learned APP appearing on behalf of the State.

2. The petitioner seeks bail in connection with Baisi

P.S. Case No. 186 of 2024 registered for the offences under

Sections 70(1), 115(2), 352, 353 and 3(5) of the BNS and

Section 4 of the POCSO Act.

3. The petitioner is named in the F.I.R. and is in

custody since 18.07.2024.

4. The allegation against the petitioner is to commit

rape upon informant alongwith two unknown co-accused

persons on 14.07.2024 at about 8:00 PM, when she went to



the river bank to attend nature's call.

5. Learned counsel appearing on behalf of the petitioner submitted that statement of victim/informant as appears through FIR *qua* occurrence is completely contradictory to that of her statement as recorded under Section 183 of the BNSS. It is pointed that victim/informant while recording her statement under Section 183 of the BNSS, categorically stated that immediately when she was laid down by two unknown persons, one motor vehicle arrived there and seeing the light of the motor vehicle accused persons fled away. It is submitted that in view of this statement of victim/informant entire occurrence appears false on its face.

6. While travelling over the argument, it is pointed out by learned counsel that the victim/informant wrongly mentioned her age through FIR as 15 years, just to aggravate the allegation of sexual assault and to bring this case under the ambit of rigorous provisions of POCSO Act but during the course of investigation police obtained her date of birth from her first attending school which is "Middle School, Guwagoan,



Baisi” where her date of birth found recorded 05.02.2006 and therefore, apparently on the date of occurrence she was more than 18 years (major) and was not a child within the meaning of Section 2(1) (d) of the POCSO Act. It is further submitted that in view of aforesaid fact submission of charge-sheet after investigation under Section 6 of the POCSO Act, prima-facie not appears convincing.

7. Further doubting the occurrence, learned counsel pointed out that as per FIR alleged occurrence took place on 14.07.2024 at about 8:00 PM, whereas as per statement of victim recorded under Section 183 of the BNSS occurrence took place on 12.07.2024 at about 8:30 PM. The FIR was also said to be lodged after the delay of 3 days. It is further pointed that the medical board constituted for the purpose of determination of age also found victim/informant between the age group of 20-22 years and on the same day she was also examined *qua* occurrence where nothing found as to suggest that informant/victim was subjected to sexual assault as alleged. While concluding the argument it is submitted that petitioner is a man of clean antecedent and moreover,



investigation has been completed and as such, there is no chance of tampering with the evidence.

8. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for bail submitted that thrust of allegation *qua* rape is available specifically against this petitioner. It is pointed out that the trial of this case now stands commenced but fairly conceded that as on date not even a single witness was examined in this matter. However, he could not dispute the contradictory factual aspects appearing out of statement of victim/informant as available through FIR *qua* her statement as recorded under Section 183 of the BNSS, as submitted above by learned counsel for the petitioner.

9. In view of aforesaid facts and circumstances and by taking note of fact as statement of victim/informant as recorded under Section 183 of the BNSS *qua* occurrence is completely contradictory to that of her version *qua* occurrence as available through FIR, coupled with the fact as petitioner is in custody since 18.07.2024, being a man of clean antecedent, accordingly, petitioner, above named, is directed



to be released on bail in connection with Baisi P.S. Case No. 186 of 2024 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Court VIIth-cum-Special Judge POCSO, Purnea/concerned court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C./ Section 480(3) of BNSS.

(Chandra Shekhar Jha, J.)

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