
(2020) 08 JH CK 0085

In the Jharkhand High Court

Case No : Bail Application No. 4997 Of 2020

Md. Kadir @ Kadir Sekh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 366, 366A
Protection Of Children from Sexual Offences Act, 2012 — Section 4
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 08 JH CK 0085

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Haider Ali, Rajneesh Vardhan

Final Decision : Allowed

Judgement

Learned counsel for the petitioner has submitted that there are defect(s) bearing defect Nos.9(i) and 9(ii) in the instant bail application, as pointed out

by the Stamp reporting dated 10.07.2020, but he has given an undertaking that he shall remove the defect(s) after the lockdown period is over and the

bail application may be heard as it is a regular bail in which the petitioner is in custody since 10.11.2018.

Considering the same, this Court is inclined to hear the bail application on its merits, but with condition that petitioner shall remove the defects within

30 days after the lockdown period is over.

Joint Registrar (Judicial) is directed to ensure the compliance of this order within 30 days after the lockdown period is over so as to remove the

defect(s).

Heard learned counsel appearing for the petitioner and learned Additional Public

Prosecutor for the State.

The petitioner, who is accused for offence under Section 366A of the Indian Penal Code and later on after charge the offence under Section 4 of the

POCSO Act and 366 I.P.C. has been added, prays for regular bail in connection with Gandey P.S. Case No.72 of 2017 corresponding to G.R.

No.1427 of 2017 (POCSO Case No.16 of 2019).

Learned counsel for the petitioner has submitted that FIR has been lodged against three named accused persons, namely, Md. Jakir @ Bhalu, Md.

Kadir @ Kadir Sekh and Md. Munna Sekh, but after investigation the Police has not sent up Md. Munna Sekh for trial rather the Police has submitted

charge-sheet under Section 366A I.P.C. and Section 4 of the POCSO Act on 26.12.2018.

Learned counsel for the petitioner has further submitted that so far medical examination of the victim is concerned, she has been assessed to be 17

years and she was not recovered from the possession of the petitioner.

Learned counsel for the petitioner has further submitted that the impugned order has wrongly recorded with respect to Para-94 of the case diary, that

this petitioner has also committed rape with victim several times rather in the statement of the victim recorded under Section 164 Cr.P.C., she has only

alleged rape against co-accused, Md. Jakir @ Bhalu.

Learned counsel for the petitioner has further submitted that charge has already been framed and out of 11 witnesses, four have already been

examined.

Learned counsel for the petitioner has further submitted that bail application of main accused/co-accused, Md. Jakir @ Bhalu has already been

rejected vide order dated 05.07.2018 passed by Co-ordinate Bench of this Court in B.A. No.4627 of 2018.

Learned counsel for the petitioner has further submitted that the petitioner is in custody since 10.11.2018, as such, the petitioner may be enlarged on

regular bail.

Learned counsel for the State has opposed the prayer for regular bail and has submitted that as per the impugned order, there is evidence against this

petitioner in commission of offence, as such, the petitioner may not be enlarged on regular bail .

Considering the rival submissions of the parties particularly statement of the victim recorded under Section 164 Cr.P.C. wherein she has only alleged

against co-accused, Md. Jakir @ Bhalu and not against this petitioner, as such, the petitioner above-named, is directed to be released on regular bail,

on furnishing bail bonds of Rs.20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge

POSCO Act, Giridih, in connection with Gandey P.S. Case No.72 of 2017 corresponding to G.R. No.1427 of 2017 (POCSO Case No.16 of 2019),

subject to the following conditions :-

(i) One of the bailors shall be deponent of the present petition, namely, Md. Zameeruddin Ansari, S/o Late Md. Nabi Hussain, R/o 149, Chhatabad,

Katrasgarh, Dhanbad, and having his UID NO.3760 6776 1551.

Office is directed send to a copy of this order along with photocopy of the UID Card bearing No.3760 6776 1551 of deponent to the court below so as

to verify the authenticity of the bailor/deponent.

(ii) Another bailor shall be close relatives of the petitioner i.e. father/mother/ brother/sister/son etc.

(iii) The Jail Authority shall release the petitioner only after his medical check- up.

(iv) The Civil Surgeon, Giridih, is directed to medically examine the petitioner at the time of his release and if requires, petitioner shall be taken for

quarantine, but if no such requirement is there, he shall be released forthwith, if not wanted in any other case.

(v) Petitioner shall appear before the learned trial court on each and every date till conclusion of the trial, failing which, the trial court shall cancel the

bail bonds of the petitioner.

(vi) Petitioner shall also comply with all the guidelines issued by the Government so as to meet the challenges of Covid-19, as the country is passing

through Pandemic of Covid-19.