

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11548 of 2015

Arising Out of PS.Case No. -723 Year- 2014 Thana -MUZAFFARPUR TOWN District-
MUZAFFARPUR

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MD. FARMAN HUSSAIN @ FARMAN HUSAIN, Md. Foujdar Hussain,
Resident of village Purani Gudri, Nakulwa Chowk, P.S. Sadar, District –
Muzaffapur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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With

Criminal Miscellaneous No.15766 of 2015

Arising Out of PS.Case No. -723 Year- 2014 Thana -MUZAFFARPUR TOWN District-
MUZAFFARPUR

- =====
1. Dilip Kumar Kushwaha Son of Harishankar Pd. Kushwaha
 2. Puja Devi Wife of Dilip Kumar Kushwaha Both are R/o Village- H/O
Shankar Prasad Chaudhary Mohalla- Chandwara, J.P. Colony, P.S.-
Town Muzaffarpur, District- Muzaffarpur. Permanent Address- Village-
Mahuara, P.S.- Pipra, District- East Champaran

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.11548 of 2015)

For the Petitioner/s : Mr. Lal Babu Singh

For the Opposite Party/s : Mr. Yogendra Kr.Singh(App)

(In Cr.Misc. No.15766 of 2015)

For the Petitioner/s : Mr. Ajay Kumar Singh

For the Opposite Party/s : Mr. B.M.P.Sinha (App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

03/ 30-06-2015

Heard learned counsels for the petitioners
and the State.

The petitioners are languishing in custody

since 01.09.2014 in a case registered for the offences punishable under Sections 363/376/34 of the Indian Penal Code and 12/18 of Prevention of Children from Sexual Offence Act.

The prosecution case is that initially the informant from early life used to return home late in the night which used to protested by family members but was sexually exploited by her two brothers, namely, Srikant and Kilu and thereafter the informant left her house and went to maternal sister, the petitioner Puja and her husband petitioner Dilip Kumar Kushwaha where she stayed for two months peacefully and thereafter they started keeping her in a rented house. Subsequently one day petitioner Dilip Kumar Kushwaha ravished her after she was forced to take beer at the behest of petitioner Puja, thereafter petitioner Dilip used to ravish her regularly. It is also alleged that petitioner Md. Farhan Hussain also sexually exploited her and on protest being made she was being assaulted. The further case of the informant is that on 29.08.2014 petitioner Dilip came to the parents' house of the informant when the father and brothers of the informant made enquiry from petitioner Dilip he raised alarm and sustained injuries due to the fall on the brick but he lodged a false case against the brothers and father of the informant being Muzaffarpur Town P.S. Case No. 718 of 2014 on 30.08.2014.



It is submitted by learned counsel for the petitioners that the statement of the victim girl reflects the conduct of the victim. Paragraph 40 of the case diary reflects that she refused to get medically examined, hence, no offence under Section 376/34 IPC of Sections 12/18 of Prevention of Children from Sexual Offences Act are made out. Though, in the FIR she levelled accusation of sexual assault against the brothers also, but in 164 Cr.P.C. statement she confined her accusation against the petitioners since petitioner Dilip lodged case against the informant's brother and father on 30.08.2014 and thereafter the present case has been lodged on 31.08.2014. No offence is made out against petitioner Puja Devi. No date of actual offence has been mentioned in the FIR which apparently suggests that it has been lodged with inordinate delay.

Learned counsel for the State submits that the victim has alleged accusation against the petitioners and charge-sheet has been submitted, but admits that victim refused to get herself medically examined.

Considering the fact that the informant herself admitted in the opening lines of written report that she used to go out of her house and used to return late when her parents and brothers used to suspect her conduct, the inconsistency

between the FIR and 164 Cr.P.C. statement of the victim and the refusal of the informant to get medically examined, let the above named petitioners, be released on bail on furnishing bail bonds of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Muzaffarpur in connection with Muzaffarpur Town P.S. Case No. 723 of 2014.

The learned court below will be at liberty to cancel the bail bonds of the petitioners, if they default for two consecutive occasions.

(Dinesh Kumar Singh, J)

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