

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.5784 of 2015**

Arising Out of PS.Case No. -354 Year- 2014 Thana -KAJI MUHAMMADPUR District-  
MUZAFFARPUR

=====

Manoj Kumar S/o Mahesh Narayan Choudhary Resident of Sadpura  
Neemchowk, P.S. Kaji Mohammadpur, District - Muzaffarpur

.... .... Petitioner/s

Versus

The State of Bihar

.... .... Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr. Praveen Kumar

For the Opposite Party/s : Mr. S. Eheteshmuddin (App)

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

3      24-03-2015      Heard both sides.

The petitioner seeks bail in Kazimohammadpur .P.S.  
Case No. 354/2014 registered for the offence under Section 376 of  
the Indian Penal Code and Section 3 and 18 of the POCSO Act,  
2012.

The informant made allegation that her daughter had  
gone to Kirana shop of the petitioner, but petitioner committed  
rape with her. In the meantime, her sister-in-law also went there in  
the shop.

Kanhaiya Prasad Singh, Learned Senior Counsel has  
submitted that this is an attempt to commit rape. The police after  
investigation submitted charge-sheet under Section 354 and other  
Sections of the I.P.C. The police did not arrest the petitioner and

ask him to appear in the Court thereafter released on personal bond under Section 41(A) of the Cr. P.C.

The Learned A.P.P. as well as Learned Counsel for the informant vehemently opposed the bail.

On perusal of the record, it appears that daughter of the victim aged about 8 years had gone to the shop of the petitioner and petitioner committed sexual assault with her. The victim also made her statement under Section 164 of Cr. P.C.

The victim in her statement distinctly stated that the petitioner inserted his private part in her private part. According to the definition of Section 376 as amended in the year 2012, the opinion of the doctor as no spermatozoa is found it cannot be said that the rape was not committed. In such a case, the police have wrongly invoked the provision of Section 41(A) of the Cr. P.C. and the supervising authority should take appropriate action against the investigating officer, who in a very casual manner made the investigation.

Considering the facts aforesaid, I am not inclined to enlarge the petitioner on bail. Accordingly the same is rejected.

**(Prabhat Kumar Jha, J.)**

Vinita/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|