

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17336 of 2016

Arising Out of PS.Case No. -85 Year- 2014 Thana -BOCHHA District- MUZAFFARPUR

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Sunil Mahto, S/o- Ram Narayan Mahto, Resident of Village- Kanhara
Hardas, P.S.- Bochahan, District- Muzaffarpur.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Mahendra Thakur, Advocate

For the State : Dr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

5 26-05-2016 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner apprehends his arrest in connection
with Bochahan P.S. Case No.85/2014 registered for offences
punishable under Sections 452, 506 and 376 of the Indian Penal
Code and Section 4 of the Protection of Children against Sexual
Offence Act.

As per the allegation, the petitioner entered the
house of the informant in the night on 09.12.2013 along with his
driver, namely, Ranjit Paswan and has committed rape upon her.
However, out of fear, the informant did not disclose it to her
parents. Again on 24.03.2014 at about 11-12 p.m., petitioner again
entered the house and tried to abduct the informant but on raising

alarm by the informant, her parents woke up and came near the informant but after pushing them the petitioner fled away. It is contended that in view of rape committed upon her on 09.12.2013 by the petitioner she has become pregnant.

The petitioner claims to be next door neighbor and agnate of the informant. Learned counsel for the petitioner has submitted that there is difference in the version of the informant made in the first information report and her statement recorded under Section 164 of the Cr.P.C. inasmuch as allegation of rape in the first information report is only upon the petitioner whereas in her statement recorded under section 164 Cr.P.C., she has stated that the petitioner and his driver Ranjit Paswan both have committed rape upon her. It is further contended that it would be apparent from the medical examination report specially the ultrasound report that the informant was having six weeks and six days pregnancy only on 01.04.2014 whereas if she became pregnant due to rape on 09.12.2013 then her pregnancy should have been of 107 days. It is contended that this falsifies the statement of the informant that rape was committed upon her on 09.12.2013 and due to which she became pregnant. It is next contended that in fact the driver of the petitioner had already lodged a case against the family members of the informant on 26.03.2014 i.e., prior to the



present first information report lodged by the informant against the father, brother and other family members of the informant and the F.I.R. is the counter blast to the same as the pregnancy cannot be related to the alleged act on 09.12.2013. It is further contended that old enmity is there as a complaint case no.1485/02 under Sections 147, 323, 504, 427, 357 of the Indian Penal Code was filed against the father, mother, brother and uncle of the informant. The accused persons were convicted by the court concerned under Sections 147 and 323 of the Indian Penal Code, however, granting benefit of Section 3 of Probation of Offenders Act, they were released after warning and censure for the same crime. It is further contended that after supervision note of the Dy. S.P. the case was again supervised by the Senior Superintendent of Police which is available in paragraph no.69 of the police case diary. From bare perusal of the same, it would appear that investigation was in wrong direction as the important fact of the age of the pregnancy was completely overlooked by the investigating officer or even by the Dy. S.P. while supervising the case.

Learned A.P.P. has submitted that Dy. S.P. has found the case true against the petitioner, however, at the same time, he also admits that ultra sound report shows pregnancy to be

only six weeks and six days which has been pointed out in paragraph no.69 of the case diary. Thus, in fact as per the allegation, the age of foetus should have been 107 days whereas it is only 48 days. Thus, it is urged on behalf of the petitioner that he cannot be attributed with such alleged act done on 09.12.2013.

Having regards to the facts and circumstances of the case, in the event of arrest/surrender within a period of six weeks from today in Bochahan P.S. Case No.85/14, the above named petitioner, Sunil Mahto shall be released on bail on furnishing bail bond of Rs.10,000(Ten Thousand Rupees) with two sureties of the like amount each to the satisfaction of 1st Additional Sessions Judge-cum-Special Judge POCSO Act, Muzaffarpur subject to the conditions as laid down under sub-section(2) of Section 438 of the Code of Criminal Procedure.

(Dr. Ravi Ranjan, J)

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