

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35951 of 2016

Arising Out of PS.Case No. -15 Year- 2016 Thana -MAHILA P.S. District- NALANDA
(BIHARSHARIFF)

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RAJBALLAV PRASAD @ RAJBALLAV PD. YADAV @
RAJBALLABH YADAV, S/o Jehal Yadav, resident of village - Pathra
English, P.S. - Muffasil, Distt - Nawada.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tanveer Ahmad, Advocate
Mr. Kundan Kumar Singh, Advocate
For the Opposite Party/s : Mr. Lalit Kishore, PAAG-1
Mr. Anjani Kumar, AAG-6
Mr. S. Dayal, Special APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
CAV ORDER

8/ 30-09-2016

This is an application, made under Section 439 of the Code of Criminal Procedure, seeking bail by the accused-petitioner, namely, Rajballav Prasad @ Rajballav Pd. Yadav @ Rajballabh Yadav, in connection with Mahila Police Station Case No. 15 of 2016, under Sections 376, 420/34, 366-A, 370, 370-A, 212, 120-B of the Indian Penal Code, Sections 4, 6 and 8 of the POCSO Act, 2012, and Sections 4, 5 and 6 of the Immoral Traffic Act, 1956, pending in the Court of learned Additional Sessions Judge-1st-cum Special Judge, Nalanda at Biharsharif.

Let me begin from the beginning. The accused-



petitioner had applied for bail under Section 439 of the Code of Criminal Procedure, which gave rise to Cr. Misc. No.29753 of 2016. However, the said application was dismissed on withdrawn by order, dated 27.07.2016. There was, admittedly, no decision on the merit of the bail application. There is, therefore, no legal impediment in proceeding with the present bail application. This apart, to a pointed query made by this Court, Mr. Lalit Kishore, learned Principal Additional Advocate General, has clearly submitted that the State had no objection to the consideration of bail of the accused-petitioner by this Court. This application was, accordingly, taken up for orders.

During the pendency of the present bail application, an Interlocutory Application being I.A. No.1671 of 2016 was filed seeking *provisional bail* on the ground of death of the father of the petitioner, and that prayer was allowed by order, dated 20.08.2016. In terms of the direction given for *provisional bail*, the petitioner has surrendered and, accordingly, been taken into custody by the learned trial Court.

Perused the above application and materials on record.

Heard Mr. Tanveer Ahmad, learned counsel for the petitioner, and Mr. Lalit Kishore, learned Principal Additional

Advocate General, appearing on behalf of the State.

Before entering into the discussion as to whether the accused-petitioner has made out a case for his release on bail, some aspects of the rudimentary principles of law governing bail need to be pointed out.

While considering an application for bail, the Court shall not enter into the merits of the case, but must, briefly, assign reasons for the order which, it may pass. In other words, while granting bail, though a detailed examination of the evidence and elaborate documentation of the merits of a given case are not to be undertaken, the Court owes a duty to assign reasons for *prima facie* concluding as to why bail was being granted. (See: ***Puran v. Rambilas*** reported in MANU/SC/0326/2001: (2001) 6 SCC 338). See also ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and anr.*** reported in (2004) 7 SCC 528, ***Vaman Narain Ghiya v. State of Rajasthan*** reported in (2009)2 SCC 281, & ***Niranjan Singh v. Prabhakar.***

From the judicial pronouncements, what surfaces is that a court, while granting or refusing bail, must assign the reasons for its decision. The reasons assigned, however, must not be an elaborate discussion of the materials collected so that the accused is not prejudiced and his case must not appear to have



been prejudged. There is, therefore, a need, on the part of the court, to maintain a balance between the need to assign reasons for refusing or granting bail, on the one hand, and the caution to be applied, on the other, to ensure that the assignment of reasons should not be so elaborate that the case of the accused appears to have been prejudged. [See: *Jayanta Kumar Ghosh and Anr. Vs. State of Assam and others* reported in (2010) 6 GLR 727]

The other aspect of law, while considering application for bail is that even when *charge-sheet* is submitted against an accused, he does not lose his right to be presumed innocent by the Court until the time he is proved guilty beyond reasonable doubt. The presumption of innocence, thus, runs in favour of even such a person, who may be accused of a heinous crime. The gravity of an offence, allegedly committed by any accused, cannot be the sole reason for rejecting his bail application unless concomitant circumstances so warrant.

Coupled with the above, there is subtle, yet firm distinction between an application for bail made by an accused during the investigation of case *vis-à-vis* an accused, who is facing trial on the basis of the charges framed against him.

While considering the question as to whether an accused, who is facing trial, shall or shall not be released on bail,

the Court must remember that the detention of an accused in custody, during trial, is not for the purpose of punishment before trial and, therefore, detention in custody, during trial, cannot be permitted as a measure of punishment, but must be warranted upon the facts and attending circumstances of the given case and the law relevant thereto.

Broadly speaking, the factors, governing refusal or grant of bail upon filing of *charge-sheet* are: (i) whether the accused would be available for trial; (ii) whether there are reasonable ground(s) to apprehend that the accused will tamper with the evidence by inducing, coercing or intimidating the persons acquainted with the facts of the case from not revealing the truth before the Court. This does not mean, I must hasten to add, that a bare application made by the informant/victim that the accused has been intimidating/threatening would be sufficient to reject the application for bail unless credible circumstances exist in support of such an application.

Bearing in mind, what have been indicated above, let me, now, come to the case at hand.

The prosecution's case, briefly set out, is that a female co-accused, on the pretext of taking the victim, to a birthday party, took her in a car to various places and brought her,



eventually, to a four storied building belonging to the accused-petitioner, where the accused-petitioner was also present. On arrival there, the female accused and the male accused (i.e. the present petitioner) consumed *alcohol* and, then, the female accused disrobed the victim and forcibly inserted a piece of cloth into the mouth of the victim and the accused-petitioner forcibly had sexual intercourse with her and that on the following day, at about 10'O clock, in the morning, she was brought back to her home. The father of the victim was called by the elder sister of the victim from their village and when he arrived, he was informed about the occurrence and, then, the victim reported the occurrence to the police. Thereafter, the police, on the basis of the description of the place, where the alleged occurrence had taken place, located the place of occurrence and carried the victim there, where the accused was seen by the victim walking in his house.

The victim was, then, medically examined by the Lady Medical Officer, Sadar Hospital, Biharsharif, on 09.02.2016, who found that the hymen bore old rupture with no injury on her private parts, she was between 16-17 years and that she was used to sex. The victim was, again, examined by a Medical Board, on 17.02.2016, which, too, did not find any injury

on her private parts and opined that she was between 16-17 years and, upon completion of investigation, *charge-sheet* has been submitted and charges have been framed accordingly.

When the charges have been framed, it can be inferred that there are incriminating materials available against the accused-petitioner. The presumption of innocence would, however, continue to run in favour of the accused-petitioner until the guilt is brought home.

What have been pointed out by the learned counsel, appearing on behalf of the petitioner, is that while the victim has alleged that the occurrence had taken place at village Giriyak in a four storied building, her father has stated that the occurrence took place at Nawada, which is the name of the district headquarter, and this difference, in the identification of the place of occurrence, has not been resolved by the prosecution. This apart, points out learned counsel appearing on behalf of the accused-petitioner, the Compact Disc (CD), which has been furnished to the accused, as one of the materials collected during investigation, shows that the photograph of the accused, appearing on mobile, was being shown by the police to the victim asking her repeatedly if the man, in the photograph, was the perpetrator of the crime; and, thus, if the accused had already

been identified by the victim at his own residence on being taken there by the police as is alleged, what was the need for an identification afresh by showing photograph of the accused appearing on a mobile? No answers to these curious questions have been given by the prosecution.

The above are, however, aspects, which need to be determined at the trial.

It is also pointed, out on behalf of the accused-petitioner, that the materials, collected by the investigating agency, do not give any indication as to how the police happened to learn and reach the house of the accused as the place of occurrence. When the victim neither knew the place as the statement recorded during investigation shows and, when, in the light of the statement recorded, the victim, on being carried to the place of occurrence, had seen the accused, why this identification was not considered sufficient to apprehend the accused? This curious position has also not been resolved. This apart, one may also note that in which floor of the four storied building, the alleged occurrence had taken place, there is, again, inconsistency and these aspects have not been explained by the prosecution. It is pointed out that while the First Information Report alleges that it was the female accused, who had inserted a piece of cloth into

the mouth of the victim, and made her unable to cry for help, whereas the victim's statement, recorded under Section 164 of the Code of Criminal Procedure, shows that it was the male accused, who had inserted piece of cloth into the mouth of the victim.

To my mind, however, these are the questions, which relate to the merits of the case and must be answered at the trial.

Now, what concerns this Court is as to whether the accused-petitioner can be allowed to go on bail pending trial. There is no dispute that the accused-petitioner is a legislator and, therefore, has roots in the society. It is not even whispered by the prosecution that the accused would not be available for trial or would abscond if he is released on bail. Though the attention of the Court has been drawn to a complaint, which has been made by the informant alleging to the effect that the accused has been intimidating the witnesses, there is no credible finding even by the prosecution agency in this regard. The filing of the very application shows that as far as the informant/victim is concerned, she is not intimidated and that is why, the informant had the courage to file the complaint with the police. There is, however, no report from the police that there is any semblance of truth in this allegation. If mere filing of such a complaint



becomes the basis of rejection of bail, it would, perhaps, become easiest thing for a complainant or an informant to do in order to make the court deny bail to an accused. The informant/alleged victim, admittedly, seek justice and, therefore, on the basis of the materials available as on today, there is no reason to apprehend that they would not be able to give evidence against the accused.

While there is no material showing that the accused has interfered with the trial by tampering evidence, there is, on the other hand, a letter on record, which has been written by the Lady Medical Officer, Sadar Hospital, Biharsharif, who had examined the victim, on 09.02.2016, addressed to the Additional Secretary, Health Department, Government of Bihar, Patna, which shows that the prosecution agency, according to the accusation made by the lady Medical Officer, had tried to influence the investigation and give it a designed shape in order to implicate the accused-petitioner inasmuch as the doctor has alleged to the effect that pressure was being put on her by the higher officers of the district to change her finding and opinion. Taking support from this complaint, the learned counsel for the accused-petitioner submits that this shows that the prosecution is malicious and the prosecuting agency, because of political reasons, wants to ensure that the accused remains incarcerated. In



this regard, it is pointed out that while the Medical Board, on conducting medical examination, on 17.02.2016, did not comment that the victim was used to sexual intercourse, it (the Medical Board) admitted that the hymen had old rupture. With no medical data to support rape, the Medical Board still has stated to the effect that rape cannot be ruled out. This shows, contends of the learned counsel for the petitioner, that the Medical Board was constituted only to reaffirm the prosecution's case that the victim had been subjected to forcible sexual intercourse.

With regard to the above, it has been submitted that though the victim was alleged to have been subjected to sexual intercourse, she was not found to have any injury nor was any forensic examination of the clothes, which were worn by the victim, carried out to ascertain the truth of the case. Moreover, there was inordinate delay in filing the First Information Report, according to the accused-petitioner.

Learned Principal Additional Advocate General, on the other hand, pointed out that delay has been properly explained inasmuch as the father had been called from his village and only after the father arrived, occurrence was reported to him, and, then First Information Report was lodged. Reacting to this submission, the learned counsel for the accused-petitioner submits that the



occurrence took place on 06.02.2016, and the father of the victim was allegedly informed on the following day, but the First Information Report was lodged on 09.02.2016, and for this delay, there is no plausible explanation. Forensic examination, learned Principal Additional Advocate General pointed out, would not have been of any help inasmuch as there was delay in lodging of the First Information Report and, therefore, except the medical examination, which had been carried out, in the present case, nothing else could have been done. The learned Principal Additional Advocate General also submits that the call records of the accused also support the prosecution's case.

With regard to other aspects of the case, which have been pointed out on behalf of the accused-petitioner, no comment has been offered by the learned Principal Additional Advocate General. The discrepancies in the prosecution's case, as pointed out on behalf of the accused-petitioner, have, therefore, remained irreconciled. The learned Principal Additional Advocate General has, however, submitted that the accused-petitioner is a legislator and maker of law and, hence, when he is involved in such heinous offence as materials, collected during investigation, revealed, he cannot be given the benefit of bail at this stage, when there is serious apprehension that he may tamper with the

evidence.

It has been rightly pointed out by the learned counsel for the accused-petitioner that the offence of rape does not fall within the restrictive provisions of Section 437 (1) (i) of the Code of Criminal Procedure inasmuch as Section 437 (1) (i) relates to offences punishable with death or imprisonment for life, such as, an offence of murder, whereas, in the case of rape, the punishment is rigorous imprisonment of not less than 7 years, but it may extend to imprisonment for life with fine. The position of law, in this regard, even with respect to aggravated assault under the POCSO Act, is no different.

It has been pointed out by the learned Principal Additional Advocate General that according to the investigating agency, the petitioner had been an accused in about ten cases. As against this, the application for bail, which is supported by the affidavit, states that there are only three cases, which are presently pending against the accused, and, in all these three cases, he is on bail. These cases relate to the offences allegedly committed under the Representation of Peoples Act, read with Indian Penal Code, which, according to the learned counsel appearing for the petitioner, are the cases, wherein the accused-petitioner was falsely implicated, because of political reasons. No

clear answer could be given, on behalf of the prosecution, if the statement made, in this regard, by the petitioner is false, when the petitioner, in clear terms, states, in his application for bail, that the accused-petitioner has already been acquitted in the other cases, which had been lodged against him.

Having regard, therefore, to the fact that incarceration of an accused, facing trial, cannot be used as a punitive measure or as a measure of punishment, there is no reasonable possibility of the accused to abscond or not being available for trial and when there is no material on record that the investigating agency found *prima facie* the accused- petitioner intimidating the witnesses coupled with the fact that there is no reliable material, as already indicated above, showing that the accused will tamper with the evidence and influence the witnesses, this Court is of the view that the accused-petitioner has been able to make out a case calling for grant of bail pending trial.

Accordingly, it is hereby directed that the accused above-named shall be released on bail of ₹10,000/- with two sureties, each of the like amount, subject to the satisfaction of the learned Additional Sessions Judge-1st-cum-Special Judge, Nalanda, at Biharsharif, in connection with Mahila Police Station

Case No. 15 of 2016.

The above direction for bail is further subject to the condition that the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him or her from disclosing such facts to the Court or to any police officer or tamper with the evidence and shall appear, in the learned Court below, as may be directed. It is made clear that any violation of the conditions of bail mentioned hereinbefore would lead to cancellation of bail of the accused-petitioner. The accused-petitioner shall not leave the territorial jurisdiction of this Court without its leave until further order.

In terms of the above observations and directions, this bail application shall stand disposed of.

(I.A. Ansari,CJ)

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