

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 22441 of 2017

Arising Out of PS.Case No. -125 Year- 2016 Thana -MAHILA P.S. District- MUZAFFARPUR

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Shubham Kumar @ Subham Kumar, Son of Satyakam Sharma @ Amal Sharma,
resident of Village- Markan, P.S. Sakra, District- Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-07-2017

Heard learned counsel for the petitioner, learned A.P.P.

for the State and learned counsel for the informant, who has *suo motu*
appeared.

2. The petitioner apprehends arrest in Mahila P.S. Case
No. 125 of 2016 dated 22.11.2016 instituted under Sections
323/324/341/504/506/354D of the Indian Penal Code and 8/12/18 of
the Protection of Children from Sexual Offences (POCSO) Act, 2012

3. The allegation against the petitioner and two others is
of having assaulted the daughter of the informant after dragging her
from a tempo and also attacking her with blade and knife leading to
cut on her face and thereafter hitting with a hard blunt substance on
her head and further of demanding extortion and forcing for marriage
of the informant with the petitioner.

4. Learned counsel for the petitioner submitted that the
parties are agnates and have their houses side by side and their land is



also adjacent for which there is dispute among them. It was submitted that from the *fardbeyan* itself of the informant, on the one hand, the allegation is that the petitioner assaulted her and inflicted knife and blade injury on face and hand but on the other hand, the allegation is also that it was for the purpose of forcing her to marry her. Learned counsel submitted that these two things cannot be accepted simultaneously for the reason that if a person intends to marry a girl, he would not deface or cause injuries, especially on the face where marks are likely to remain for life. It was further submitted that besides the petitioner having clean antecedent, during investigation the owner of the hostel and a girl living in the hostel have stated that the informant had been taken away by her father one day prior to the date of occurrence and further that no such incident took place. Learned counsel submitted that even the injury report does not disclose any cut, either on the face or the hands.

5. Learned counsel for the informant submitted that the relationship of being agnates is denied and they are only co-villagers. He further pointed out that the Investigating Officer has been partisan in conducting the enquiry where, while recording the injury report he has omitted that the injury on the head was referred for CT scan and expert opinion was awaited and further that he has introduced the word 'caused by hard blunt substance' which is not there in the injury report.



6. Learned A.P.P., from the case diary, submitted that though the informant has reiterated the allegation in a statement under Section 164 of the Code of Criminal Procedure, 1973, but the I.O. has recorded in the case diary about the certificate issued by the *Sarpanch* stating that the parties are cousins and their houses are situated side by side.

7. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Muzaffarpur in Mahila P.S. Case No. 125 of 2016, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973.

8. The petitioner and the bailors shall execute bond with regard to good behaviour of the petitioner. The petitioner shall also give an undertaking to the Court that he shall not indulge in any criminal activity. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the trial and be present before the Court on each and every date. Failure to cooperate or appear on two consecutive dates, without sufficient cause, shall also lead to



cancellation of his bail bonds.

9. The application stands disposed off.

10. Before parting with the order, the attention of the Court has been drawn to the injury report of the informant, copy of which has been produced by learned counsel representing her. Comparison of the same by learned A.P.P. of what has been recorded in the case diary at paragraph-93 reveals that the reference of expert opinion required for CT scan besides being omitted, the I.O. introduced the ‘caused by hard blunt substance’. The Court takes serious note of the same and directs the Senior Superintendent of Police, Muzaffarpur to verify the matter and if found true, start appropriate proceeding against the Investigating Officer and also ensure that a different person investigates the case, and if required, afresh.

11. A report be submitted to the Court by Mr. Dr. Ajeet Kumar, learned A.P.P., with regard to action taken by the Senior Superintendent of Police, Muzaffarpur and only for the limited purpose, the matter be listed under the heading ‘For Orders’ on 26th July, 2017 at 2.15 P.M.

(Ahsanuddin Amanullah, J.)

P. Kumar

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