

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43733 of 2016

Arising Out of PS.Case No. -86 Year- 2016 Thana -MUSAHRI District- MUZAFFARPUR

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1. Sanjay Kumar Son of Late Sahdeo Rai Resident of Village- Chackabdul
Islam Khajuri, P.S.- Baligaon, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S.N.P. Sinha, Sr. Advocate

Mr. Jitendra Narain Sinha, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 18-01-2017 Heard learned counsel for the petitioner as well as
learned APP.

2. It has been alleged by the victim, Ranju Kumari
aged about 16 years that on 24.06.2016 at about 2:00 PM, one
person came to her place and further, disclosed that her mother is
to be employed as a cook under Anganbari scheme and for that,
she was directed to come along with her mother. Subsequently
thereof, that gentleman repeatedly contacted over her mobile by
his own mobile bearing SIM No. 8873433434. Even on the
following day i.e. on 25.06.2016 at about 8:00 AM, he gave
reminder. Accordingly, she along with her mother came to
Kachchi-Pakki near Hanuman temple where he was present and
from that place, he took both of them near a school. After
directing her to sit, that person took away her mother. After half



an hour, he again came to her along with a motorcycle and then on the pretext of carrying her to her mother, he directed her to sit over motorcycle and accordingly, she did. Then thereafter, he began to loiter and lastly, he took her to a lonely place which was an abandoned kiln where he forcibly told her to sit over a polythin and began to tease. On protest, he threatened with dire consequences and then, thereafter, committed rape. Subsequently thereof, he again carried and during said course halted at a place where he began to talk over the mobile and getting an opportunity she got down from the motorcycle running towards village where she disclosed her woes. Seeing the villagers, he made a narrow escape. It has further been disclosed that she perceived that she was going to be sold for Rs. 3 Lacs.

3. Learned counsel for the petitioner has submitted that petitioner has fallen victim of false implication at the instance of local Mukhiya. Furthermore, it has been submitted that whenever there happens to be incident of rape, prosecution is under obligation to examine the accused just after his arrest in terms of Section 53A of the CrPC and violation thereof, happens to be hazardous to the prosecution even to the extent of permitting acquittal of the accused as has been held by the Hon'ble Apex Court.



4. It has also been submitted that victim was examined by the Board of doctors and her hymen was found intact. So it rules out the factum of rape and is further found substantiated with pathological examination which also negativates presence of spermatozoa. So cumulative effect suggests that neither the petitioner could be held responsible for commission of rape nor rape was ever committed upon the victim.

5. It has also been submitted that in the background of group rivalry with the local Mukhiya, he has been implicated and to substantiate the same, it has been submitted that though petitioner was apprehended on the following day of institution of the case, at the time arrest petitioner was not at all found in possession of SIM bearing No. 8873433434 nor owner of the aforesaid number has been traced out. In likewise manner, the prosecution failed to connect the petitioner to be owner of the aforesaid SIM Number. That being so, identification of the petitioner during course of TIP should not be considered adverse to his interest as the whole event is found guided at the whims of local Mukhiya. So submitted that petitioner be released on bail.

6. On the other hand, learned APP opposed the prayer for bail.

7. True it is that, from the Fard-e-beyan which was



recorded one day after the occurrence, the name of the petitioner does not find place but, there happens to be specific disclosure that the victim had an opportunity to see the culprit who had contacted her a day prior and had informed that her mother is going to be employed as a cook under Anganwari scheme. Therefore, identification of petitioner during course of TIP could not be said to be in contravention of any sort of factual as well as legal aspect.

7. In the aforesaid background, there happens to be prima facie material showing connectivity of the petitioner with the crime and so, I do not see any cogent reason to release the petitioner on bail for the present. Accordingly, prayer for bail is rejected.

(Aditya Kumar Trivedi, J)

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