

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47934 of 2017

Arising Out of PS.Case No. -99 Year- 2016 Thana -BANKA District- BANKA

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Md. Kalim @ Kalim Ansari @ Md. Kalim Ansari son of Late Tikan Mian
@ Taken Mian, resident of Village- Singarpur, P.S.- Dhoraiya, District-
Banka (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Raju Giri, Advocate.

Mr. Santosh Kumar Mishra, Advocate.

For the Informant : Mr. Diwakar Pd. Singh, Advocate.

For the Opposite Party : Mr. Ram Bachan Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 10-01-2018 Supplementary affidavit on behalf of the petitioner

and counter affidavit on behalf of the informant are accepted and

taken on record.

Heard the learned counsels for the petitioner, the
informant and the State.

The petitioner seeks bail in connection with Sessions
Trial No. 303/16+17/17, arising out of Banka (Barahat) P.S. Case
No. 99 of 2016 dated 20.02.2016 which was initially instituted for
the offences under Sections 363 and 364 of the Indian Penal Code.
Later, charge sheet was submitted under Sections 366A and 34 of
the Indian Penal Code in which cognizance was taken under the
same Sections of the Indian Penal Code. However, after the



deposition of the victim of this case, the charges were altered into one under Section 376D and other Sections of the Indian Penal Code.

The father of the victim girl lodged the FIR on 20.02.2016 alleging that his daughter (victim) went missing on 12.02.2016 when she had gone out of her house to purchase a cosmetic item. Later, the informant received a telephone call from Nathnagar Ramanandi Orphanage at Bhagalpur informing him that his daughter is lodged in the aforesaid orphanage. The informant thereafter went to the orphanage and met his daughter. Thereafter, on 20.02.2016, the FIR was lodged.

The victim made her statement under Section 164 Cr.P.C. on 24.02.2016 alleging that she was administered some deleterious substance and was taken to Coal Depot from where she was brought to the shop of one Chhotu. She has named the petitioner and many others in the aforesaid statement including Faizlu, Sajid, Murtza, Majhar and Sahul but has not alleged any rape on her. After the investigation, first charge sheet was submitted on 27.10.2016 against the petitioner and one Sah Alam @ Bablu under Section 366A/34 of the Indian Penal Code; whereupon cognizance was taken under the same Section on 29.10.2016. The investigation with respect to the other accused



persons remained pending. In the meantime, a criminal writ was filed before this Court, raising doubts about the fairness of the investigation. The then Hon'ble the Chief Justice vide his order dated 27.09.2016 passed in Criminal Writ Jurisdiction Case No. 883 of 2016 directed the Superintendent of Police, Banka to enquire into the grievances raised in the aforesaid writ petition and to do the needful in accordance with law expeditiously, preferably, within a period of six months in order to ensure proper, fair and effective investigation into the aforementioned case.

It appears that thereafter the investigation with respect to the petitioners also was re-opened and the victim's statement was recorded on 09.11.2016. On the same day the statement of the informant was also recorded. Their statements are contained in paragraph 17 and 18 respectively of the supplementary case diary. The aforesaid statements are in pari-materia. The victim has, after nine months of her having made statement under Section 164 Cr.P.C., has alleged that she was raped by two of the accused persons viz. Sahul and Sah Alam @ Bablu. In the aforesaid statement the petitioner has also been named but no allegation has been raised with respect to his raping the victim. The second charge sheet in this case was submitted against six accused persons under Sections 366A and 34 of the



Indian Penal Code and cognizance was also taken under the same Sections. Pursuant to the aforesaid, two trials proceeded; one for the petitioner and co-accused Sah Alam @ Bablu and the other for the six other accused persons who were later chargesheeted. However, on 16.05.2017, both the trials were amalgamated and one trial is continuing. During the trial, the victim gave her deposition on 12.07.2017 in which she has reiterated the statement which she made on 09.11.2016 which has been recorded in the supplementary case diary. After her deposition was recorded by the trial court, a prayer was made on behalf of the prosecution for altering the charge under Section 376D of the Indian Penal Code as there was definite material, according to the prosecution, of the victim having been subjected to gang rape. The aforesaid prayer of the prosecution was rejected on 20.06.2017. Later again, on the same set of facts, another application seeking alteration of charge was filed and the trial court vide order dated 10.08.2017 altered the charge into one under Section 376D and other Sections of the Indian Penal Code.

Learned counsel for the petitioner has submitted that out of 16 prosecution witnesses only two have been examined and 14 are yet to be examined. Mr. Diwakar Pd. Singh, learned counsel for the informant, however, has submitted that the trial is



almost on the verge of completion and out of only six cited witnesses, two have already been examined.

It has also been submitted on behalf of the petitioner that co-accused Sah Alam @ Bablu who is alleged to have committed rape on the victim has been granted bail by a Bench of this Court on 26.07.2017 passed in Cr. Misc. No. 24442 of 2017. The order referred to above has been annexed as Annuxure-4 to the bail petition. While granting bail to the aforesaid co-accused Sah Alam @ Bablu, the Bench took note of the fact that neither in the statement recorded under Section 164 Cr.P.C. of the victim nor in her deposition before the trial court, did she allege any act of rape against the aforesaid Sah Alam @ Bablu.

Learned advocate for the petitioner has also canvassed before this Court that because of the dispute which was generated during the Panchayat elections, the present case has been lodged.

Considering the aforesaid facts and the period of custody of the petitioner which is from 03.09.2016, the petitioner above named is directed to be released on bail on his furnishing bail bond in the sum of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District-Cum-Sessions Judge (2nd), Banka in



connection with Sessions Trial No. 303/16+17/17, arising out of Banka (Barahat) P.S. Case No. 99 of 2016.

However, it is made clear that the petitioner shall participate in the trial and his unauthorized absence from the trial court proceedings for two consecutive dates, without any plausible explanation, would render the bail granted to him liable to be cancelled and the trial court shall, in that event, take prompt steps for cancellation of the bail of the petitioner.

The prayer for bail of the petitioner is, accordingly, allowed with the aforesaid observation.

(Ashutosh Kumar, J)

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