

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10311 of 2019

Arising Out of PS. Case No.-388 Year-2018 Thana- BHORE District- Gopalganj

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SOHRAB AHMAD @ SOHRAB SHEKH, Son of Imteyaz Ahmad @ Shekh Imteyaz, Resident of Village / Mohallah- Sidhwania, P.O.- Baghi Bazar, P.S.- Kateya, District- Gopalganj (Bihar)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 21-02-2019 Heard leaned counsel for the petitioner and learned APP for the State.

The petitioner is languishing in custody since 19.12.2018 in a case registered for the offences punishable under Sections 376 and 34 of the Indian Penal Code and under Sections 4, 6 and 8 of the POCSO Act.

The prosecution case as per the written report of Shabnam Khatoon submitted to the S.H.O., Bhorey Police Station is to the effect that on 27.11.2018 at about 07.30 P.M., the informant went outside for ease out, in the meantime, the petitioner ravished her and on alarm being raised, nearby people came, then the petitioner escaped from the scene. Thereafter, the own brother of the petitioner took the informant to the house



and when the mother and sister of the informant went to the house of the accused person to enquire about the incident, then they were also assaulted by co-accused Seraj Shekh and Ishraj Shekh, causing bleeding injury.

It is submitted by learned counsel for the petitioner that for the occurrence of 27.11.2018 at 07.30 P.M. the FIR was registered on 28.11.2018 at 04.05 P.M. It is further submitted that for the same incident, the mother of the informant, Noorsaba Khatoon lodged Bhorey P.S. Case No.386 of 2018, levelling accusation under Sections 341, 323, 379,504,506,34 of the IPC wherein she has alleged that five accused persons, including the petitioner, came and started abusing the informant. On protest being made, all the accused persons started assaulting the informant. It is specifically alleged that co-accused Gudul, Aftab and Ishraj assaulted the informant with lathi, danda, fists and slaps, causing bleeding injury. It is further alleged that when the daughters of the informant namely, Shabnam Khatoon and Rehana Khatoon came to rescue, they were also assaulted by the co-accused persons and in course of assault, they snatched a gold chain from the neck of the mother of the informant. It is further submitted that the said FIR lodged by mother of the informant was registered on 28.11.2018 at



08.30 A.M. prior to lodging of the present case. Moreover, the petitioner also lodged a case against the informant side on 28.11.2018 at 08.45 A.M. being Bhorey P.S. Case No.387 of 2018 in which the petitioner also sustained injuries. Hence, for the same incident two FIRs have been lodged, i.e., one was lodged by the mother of the informant at an earlier point of time, while the other was lodged by the victim herself with quite different narration, which completely demolishes the prosecution case. It is further submitted that the impugned order does not stipulate whether the victim was medically examined or not. Apart from that the victim in her statement recorded under Section 164 of the Cr. P.C., got her age recorded as 16 years, when the learned Court below has also assessed her age as such and the victim has stated that the petitioner on the pretext of marriage established physical relationship with her and ultimately, she got pregnant and when she stated this fact to the petitioner, the petitioner tried to rape her and also assaulted her.

Learned APP for the State submits that there is specific accusation against the petitioner of committing rape upon the informant.

Considering the inconsistency between the FIR



lodged by the informant, mother of the informant and the statement of the victim recorded under Section 164 of the Cr. P.C. and the accusation not being corroborated by any medical opinion, let the above named petitioner be released on bail, on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned **1st Additional Sessions Judge, Gopalganj,** in connection with **Bhorey Police Station Case No.388 of 2018.**

(Dinesh Kumar Singh, J)

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