

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70498 of 2018

Arising Out of PS. Case No.-24 Year-2017 Thana- MAHILA PS District- Khagaria

Md. Tinku Son of Late Md. Rajjak Resident of Village-Khirnia,P.S.
Mansi,Distt.-Khagaria

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Md. Najmul Hodda

For the Opposite Party/s : Mr.Dr. Ajeet Kumar

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 16-04-2019 Heard learned counsels for the parties.

The petitioner is apprehending arrest in a case registered for the offences punishable under Section 376(g) of the IPC.

The prosecution case as per the written report of Kanchan Devi submitted to the SHO, Khagaria Mahila Police Station is to the effect that on 12.5.2017 at 11.00 P.M., the informant was sleeping in her house along with her niece, in the meantime, the petitioner and co-accused Sanjay Sharma entered into the house. Thereafter, co-accused Sanjay Sharma pointed pistol on the neck of the informant and asked not to raise alarm and it is further alleged that the petitioner ravished the informant. The petitioner and co-accused Sanjay threatened the informant of dire consequences if she discloses the incident to any one, as a result, the informant kept quite but in the morning, she conveyed about the incident to her



father-in-law and sister-in-law (Gotani) and thereafter, the present FIR has been registered.

It is submitted by learned counsel for the petitioner that for the alleged occurrence of 12.5.2017 at 11.00 P.M., the FIR was registered on 13.5.2018 at 9.10 P.M. It is further submitted that during investigation, the accusation has not been supported by Manisha Kumari, the petitioner's neice who, as per the written report, was sleeping with the informant. The accusation is not being corroborated by the medical opinion as there is not any resisting injury nor any injury on the private part of the body nor any sign of rape has been found though body of the victim and the victim was examined on 15.5.2017. The medical report suggests that there is no evidence of establishment of physical relationship by the petitioner. Admittedly, on conclusion of investigation, the petitioner was not sent up for trial but subsequently, differing with the final form, the learned CJM, Khagaria took cognizance under Section 376 of the IPC. It is also submitted that even assuming the accusation to be true, no offence under Section 376(g) of the IPC is made out against the petitioner. Moreover, during investigation, the witnesses have stated that the informant was on inimical terms with co-



accused Sanjay Sharma hence, the petitioner also has been roped in the present case. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP submits that the statement of niece of the informant who was sleeping with the informant at the relevant time, has been recorded in paragraph 6 of the case diary, where she has stated that she did not see as to who entered into the house and she was conveyed about the incident next day by the informant. It is further submitted that in paragraph 9 of the case diary, witness Ramchandra Yadav suggested that there was land dispute between the informant and co-accused Sanjay Sharma.

Considering the fact that the accusation is not being corroborated by Manisha Kumari, who as per the informant was sleeping with her and above all, the accusation not being corroborated by the medical opinion which led to submission of final form, let the petitioner above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned JM Ist Class,



Khagaria in connection with Mahila P.S. Case No.24 of
2017 subject to the conditions laid down in Section 438(2) of
the Cr.P.C.

(Dinesh Kumar Singh, J)

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