

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24588 of 2019

Arising Out of PS. Case No.-59 Year-2017 Thana- MAHILA P.S. District- Madhubani

SUDHIR KUMAR YADAV Son of Shiv Kumar Yadav Resident of Village-
Shilkar, P.S-Jaynagar, District-Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Subhash Kumar Jha

For the Opposite Party/s : Mr.Binod Kumar

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

10 04-12-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in F.I.R. No. 59/2017 dated 02.08.2017, registered at Police Station-Mahila District- Madhubani under Sections 323, 341 and 376/34 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State. I have also perused the relevant record of the case, necessary for adjudication of this petition.

Having heard learned counsel for the petitioner, at this stage, this Court is not inclined to allow the application for bail filed under Sections 439 and 440 of the Code of Criminal Procedure.



The Court is dealing with a case where a person undisputedly a minor child was allegedly subjected to sexual assault.

Learned counsel for the petitioner has made the following statements:

(a) the petitioner is a man of good moral character and a law abiding citizen;

(b) he stands falsely implicated as a result of counter blast to the complaint filed by the petitioner's mother against the family members of the prosecutrix;

(c) there is delay in lodging the FIR;

(d) there is no sign of alleged rape;

(e) no statement of the prosecutrix has been recorded;

(f) no test identification parade was carried out by the prosecution during investigation.

It is a matter of record that investigation is complete and the challan, prima facie, indicating complicity of the accused in the alleged crime, stands filed.

The necessity of conducting the test identification parade would arise only when identity of the accused is in doubt, which, in the instant case, was not so. The parties were known to each other and the alleged crime took place though in



night but at the time when prosecutrix had gone out to ease out herself. At that place there was light.

It cannot be said that prima facie it is a case of a counter blast. The prosecution, who is deaf and dumb, immediately after the occurrence, reported the incidence to her family members. One cannot ignore the fact that parties hail from rural background and as such delay of approximately 12 days cannot be said to fatal. The parents of the prosecutrix are illiterate and in any case whether delay is fatal to the prosecution or not is for the trial court to see after the conclusion of trial. In fact, it is the petitioner, on confession, has averred in paragraph-8 of the petition that a Panchayati was sought to be convened, which itself explains the cause of delay.

One cannot forget that crime is against a minor girl child and the accused allegedly raped her. Absence of injury on the body and its effect is for the trial court to examine during trial, but prima facie it cannot be said that the accused is not involved in the crime. Statement of the mother of the prosecutrix recorded under Section 164 Cr.P.C. is on record in which complicity of the accused in the alleged crime stands revealed.

The crime is heinous in nature, and at this stage, involvement of the accused/petitioner in the crime cannot be



said to be ruled out.

From the record it cannot be inferred that it is a case of false implication. The law mandates statutory presumption of commission of crime, unless proved to the contrary.

It is settled law that grant to bail is the discretion of the court but the discretion must be exercised not in opposition to, but in accordance with the well established principles of law.

The law laid down in Gudikanti Narasimhulu Versus Public Prosecutor, (1978) 1 SCC 240 by Justice Krishna Iyer explains the judicial discretion as- the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that discretion when to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humor, it must not be arbitrary, vague and fanciful, but legal and regular.

The Apex court in case titled- Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281 and State of U.P through CBI v. Amar Manik Tripathi, (2005) 8 SCC 21 decided It is well settled that the matter to be considered in an application for bail are....

(A) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence



(B) Nature and gravity of the charge-sheet

(C) Severity of the punishment in the event of conviction.

(D) danger of the accused absconding or fleeing if released on bail

(E) Character, behaviour, means, position and standing of the accused

(F) Likelihood of the offence being repeatedly reasonable apprehension of the witnesses being tampered with and

(G) danger, of course, of justice being thwarted by grant of bail.

Grant of bail, though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts however, do always vary from case to case. While placement of the accused in the society, though may be considered by that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other



circumstances was ranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail – more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

In Prasanta Kumar Sarkav Vs Ashish Chatterjee, (2010) 14 SCC 496, the Hon'ble Supreme Court has summarized the basic principles laid down in catena of judgments on the point of granting bail. The Hon'ble Supreme Court proceeded to enumerate the following factors:

“... among other circumstances, the factors (which are) to be borne in mind while considering an application for bail are :

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;



(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger of course of justice being thwarted by grant of bail.”

In the case titled- State of Orissa v. Mahimananda Mishra JT, 2018 (9) SC 186 it was held that at the time of considering the bail application, the court must take into account certain factors such as the existence of prima facie case against the accused, gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering of the witnesses and obstructing the court as well as the criminal antecedents of the accused. It is also well settled that the court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of the prima facie case against the accused.

In Vilas Pandurang Pawar Versus State of Maharashtra, (2012) 8 SCC 795 also it was held that while considering application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in



critical analysis of evidence on record.

The present case has been registered under Sections 323,341 and 376/34 of the Indian Penal Code and Section 4 of POCSO Act. Considering the gravity of the offence and finding that prime facie there are sufficient materials on record, I find no merits in the petition.

In view of the above discussion, I am not inclined to allow the petition by granting bail to the applicant/accused. The petition of the applicant/accused is hereby dismissed.

Any observation made herein shall not be construed to be an expression on the merits of the matter.

The petition stands disposed of.

(Sanjay Karol, CJ)

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