

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54475 of 2019

Arising out of PS. Case No.-46 Year-2019 Thana- BISFI District- Madhubani

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GANESH MANDAL, Son of Fouzdar Mandal, Resident of Village -
Yogiyara, Ward No. 3, P.S.- Jale, Distt - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Jha, Advocate

For the Opposite Party/s : Mr. D.P. Tiwari, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

4 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. 46 of 2019, dated 02.03.2019, registered at Police

Station Bisfi under Sections 363 of the Indian Penal Code.

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.

Learned counsel for the petitioner invites attention of
this Court that main accused stands enlarged on bail vide order
dated 30.08.2019 passed by a co-ordinate Bench of this Court in
Cr. Misc. No. 54252 of 2019, titled as Ramnath Mahto Vs. The
State of Bihar. The said order, in toto, reads as under:-

“Heard learned counsel for the petitioner and



learned APP for the State.

The petitioner seeks bail in a case instituted for the offences under Section 363 of the Indian Penal Code.

The prosecution allegation in short is that the minor girl of the informant left the house for cutting grass but later did not return.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 13.3.2019 and has got no criminal antecedent. There is no allegation of tampering of witnesses alleged against the petitioner. Charge-sheet has been submitted in the present case. The petitioner has falsely been implicated in the present case. The statement of the victim has been recorded under Section 164 Cr.P.C. in which she has not levelled any allegation of sexual or physical abuse against the petitioner. The petitioner is said to have been made accused due to mistake of fact.

On behalf of the State, it is submitted that the petitioner is named in the F.I.R.

Considering the aforesaid facts and circumstances, it is directed that the petitioner, above named be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned A.C.J.M. Benipatti, Madhubani in connection with Bisfi P.S. Case No. 46/2019, G.R. No. 131/2019.”

It is not in dispute that the present bail applicant,



namely, Ganesh Mandal is not the main accused. In a case of bail, there cannot be any parity, but the record so produced reveals that even the prosecutrix in her statement under Section 164 Cr.P.C. has not ascribed any role to the accused in relation to the charged offence. Prima facie also, it appears that thus far no case against the petitioner is made out indicating his complicity in the alleged crime.

It is submitted by learned counsel for the petitioner that the petitioner has roots in the society; is not likely to interfere in the investigation or influence any of the witnesses or destroy the evidence; is behind bars since 11.03.2019; no custodial interrogation is required; investigation is complete and charge-sheet stands filed, and the petitioner has fully cooperated in the investigation.

Prima facie, nothing is produced to highlight petitioner's direct involvement in the crime.

Thus, this Court is of the considered view that petitioner has made out a case for grant of bail. Possibility of false implication, as is so alleged by the petitioner, cannot be ruled out. Also, thus far no evidence corroborative in nature stands recorded by the police. Also, none has come forward to highlight the possible involvement of the petitioner in the crime.



On what basis the Investigating Officer could link the accused to the crime is also not emanating from the record.

Be that as it may, considering the entire attending facts and circumstances of the case, let the petitioner, named above, be released on bail on furnishing bail bond of Rs. 25,000/- (Twenty five thousand) with two sureties of like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Benipatti (Madhubani) in connection with Bisfi P.S. Case No. 46 of 2019, corresponding to G.R. No. 131 of 2019, on the following conditions:-

(i) That one of the bailors of the petitioner shall be his close relative.

(ii) That the petitioner shall not indulge in any similar offence till conclusion of the trial.

(iii) That the petitioner shall remain physically present in court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, his bail bonds shall be liable to be cancelled by the learned court concerned.

(iv) The petitioner shall cooperate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the



State shall be at liberty to move for cancellation of bail.

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

Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

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