

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59780 of 2019

Arising Out of PS. Case No.-165 Year-2019 Thana- CHHATAPUR District- Supaul

Md Sarfaraz @ Sarfaraz Son of Md. Sadik Alam @ Md. Sadik Mian,
Resident of Village- Mohaddipur, P.S.- Chhatapur, District- Supaul.

... .. Petitioner

Versus

1. The State of Bihar
2. Afsana Khatoon D/o Md. Abbas, Resident of Hariharpur, Ward No.12, P.S.-
Chhatapur, District- Supaul.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Amrit Abhijat, Advocate
For the Opposite Party/s	:	Mr.Ashraf Ansari, APP
For the O. P. no. 2	:	Mr.Nafisuzzoha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 27-11-2019 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel representing the
informant.

The petitioner in the present case is seeking regular
bail in connection with with Chhatapur P.S. Case No. 165 of
2019 registered for the offences punishable under Sections 376,
341, 323, 504, 506 and 34 of the Indian Penal Code.

The petitioner is said to be in custody since
30.06.2019.

According to the allegations made in the first
information report, this petitioner visited her house on
23.06.2019 at 10:30 a.m. while she was alone and told her that



her mother had become unconscious while working in the field. On this information the informant accompanied said Sarfaraj (the petitioner) but when she reached near Idgah, the petitioner along with the co-accused placed a pistol on her temporal region and forcibly made her to sit on a motorcycle. She claims to have become unconscious and thereafter when she regained her sense she found that she was raped. It is alleged that from 23.06.2019 to 25.06.2019 both the accused established physical relationship with the informant and then on 25.06.2019 at about 8:00 a.m. they brought her on their motorcycle and left her at Madhubani Chauk.

Learned counsel for the petitioner submits that in course of investigation the Police has examined CDR of the mobiles of this petitioner and the victim and in course of scientific investigation done by Police which has been recorded in Paragraph '89' of the case diary it has been found that the petitioner and the victim lady had been talking to each other regularly and continuously for long time. On the alleged date of occurrence when the victim claims to have been forcibly taken away and till 25.06.2019 the mobile location of the victim was found in her village only. The police has recorded that on 21.06.2019 the victim lady had talked to this petitioner in the



morning and thereafter in the evening also, in between she had tried twice to contact the petitioner but the call did not materialise. Again on 22.06.2019, 23.06.2019 and till 10:16 AM on 24.06.2019 the mobile location is in village of the victim. On 24.06.2019 at about 1:15 PM she had talked for about 7 seconds and the location of the mobile is at a distance of 7-8 Kms from her village in between her maternal uncle's village.

On analyzing the call details, police has found that the story given by the victim as regards her being forcibly taken away by the petitioner is doubtful. On 23.06.2019 at about 12:00 noon she has talked to some other person and thereafter she has talked on several other numbers. Police has found this to be a case of love affair between the petitioner and the victim girl.

Again in course of investigation when the victim lady was examined by the Medical Board, the Medical Board has done microscopical examination in which they have not found any spermatozoa either living or dead. The age has been determined in between 20-22 years and the Medical Board has not found any sign of rape. The Board has, however, recorded 'Habitual intercourse type'.

In the aforementioned background, the police has not



found the case true under Section 376 IPC and in course of argument even learned A.P.P. for the State and learned counsel for the informant have accepted that the case under Section 376 IPC has not been found true and no charge-sheet has been submitted under this section, though charge-sheet has been submitted under other provisions of the Indian Penal Code including Section 354 of the Indian Penal Code.

Learned counsel for the petitioner submits that this petitioner has married to another lady on 22.06.2019 and in this regard he has produced the marriage certificate and Nikahnama. It is submitted that for this reason alone the present case has been lodged for falsely implicating the petitioner by alleging commission of rape.

Learned counsel for the Informant has opposed the prayer for regular bail of the petitioner stating that the victim lady has supported her allegation in course of her statement recorded under Section 164 Cr.P.C.

Learned A.P.P. for the State has submitted that on perusal of the case diary it seems that the petitioner and victim lady were in touch with each other for a long time and police has not found the case true under Section 376 IPC and the story of her being taken away forcibly by the petitioner has also not



been believed.

Considering the facts and circumstances and the submissions made at the Bar and upon perusal of the case diary, having found that the police has done some scientific investigation in the matter which have been taken note of hereinabove and that the story of being taken away forcibly and commission of rape has been found doubtful and no charge-sheet has been filed against the petitioner under Section 376 IPC and the petitioner is in custody for about five months, let the petitioner above named be released on bail in connection with Chhatapur P.S. Case No. 165 of 2019 on furnishing of bail bond of Rs. 15,000/- (fifteen thousand) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-IV, Supaul, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person



acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(Rajeev Ranjan Prasad, J)

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