

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.62332 of 2019**

Arising Out of PS. Case No.-43 Year-2019 Thana- MAHILA P.S. District- Kaimur (Bhabua)

SHUBHAM KUMAR S/o Late Jokhan Sah R/o village- Bharakhar, P.S.-  
Mohaniya, District- Kaimur at Bhabhua

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

**Appearance :**

|                            |                           |
|----------------------------|---------------------------|
| For the Petitioner/s :     | Mr. Rajesh Singh          |
|                            | Mr.Dharmendra Kumar Singh |
| For the Opposite Party/s : | Mr.Anil Kumar             |

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

2      23-10-2019                      Heard learned counsels for the parties.

The petitioner is languishing in custody since 22.7.2019 in a case registered for the offences punishable under Sections 366A, 376D and 506/34 of the I.P.C. and Section 6 of the Prevention of Children from Sexual Offences Act, 2012.

The prosecution case, as per the written report of Rupa Kumari submitted to the SHO, Bhabhua Mahila Police Station dated 6.6.2019, is to the effect that on 3.6.2019 at 6.30 A.M., the petitioner called the informant on her mobile phone and asked her to come over to see his newly purchased mobile phone. The informant went to the shop of the petitioner, thereafter she was forced to sit on a motorcycle driven by two persons and her mouth was tied. It is further alleged that the petitioner administered toddy, as a result, she felt unconscious and when



she regained consciousness, she found herself in a pool of blood and realized that she has been kidnapped. Thereafter, the petitioner promised to marry her. Subsequently, she was allowed to return home.

It is submitted by learned counsel for the petitioner that for the occurrence of 3.6.2019, the FIR was registered on 6.6.2019. It is further submitted that in the statement under Section 164 Cr.P.C. the victim has stated that she of her own went with the petitioner and she did not allege being misbehaved by the petitioner. The medical report completely negates the commission of rape as no injury, external or internal, was found and in view of the 164 Cr.P.C. statement, no offence under Section 366A IPC is made out. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. It is also submitted that chargesheet has been submitted under Section 366A IPC on 18.9.2019.

Learned APP submits that there is specific accusation against the petitioner and from 164 Cr.P.C. statement it appears that the victim is aged about 14 years.

Considering the fact that the accusation of rape is being completely negated by the medical opinion, the submission of learned counsel for the petitioner that on



conclusion of investigation, charge sheet has been submitted only under Section 366A IPC, which negates the accusation in the FIR under Section 376 IPC and the period in custody, let the petitioner above named 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 the learned Additional Sessions Judge Ist-cum-Special Judge, Kaimur at Bhabua in connection with Mahila (Bhabua) P.S. Case No.43 of 2019.

**(Dinesh Kumar Singh, J)**

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