

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.350 of 2020

Arising Out of PS. Case No.-75 Year-2019 Thana- MAHILA P.S. District- Kaimur (Bhabua)

ABHISHEK CHAUHAN, Son of Ashok Chauhan, Resident of Village-
Madriya, P.S.- Chand, District- Kaimur (Bhabua).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kumar Sunil, Adv.

For the Opposite Party/s : Mr.Satyendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 28-05-2020 This has been posted before me for hearing through video-conferencing, under the orders of Hon'ble the Chief Justice, in view of Nation passing through lockdown as an aftermath of the outbreak of COVID-19 pandemic.

Heard learned counsel for the petitioner and learned APP for the State.

The petitioner seeks bail in a case registered for the offence punishable under Sections 341, 323, 376 (a), 376 (b), 504 of the Indian Penal Code and Section 04 of the POCSO Act.

The prosecution case is that one Kajal Kumari aged about 10 years, gave her written complaint before the SHO Mahila P.S. Bhabua on 04.11.2019 stating therein that on 01.11.2019 at about 7.00 P.M. while she went to bring water from the Govt. Hand Pump situated at the village on the southern side of pond



at that time her co-villager namely Abhishek Chauhan (petitioner) aged about 19 years came and caught her and took her to near the Mountain side and forcibly did wrong Act and her maternal uncle namely Manohar Chauhan came for his rescue then the petitioner assaulted him and upon hulla the villagers came and the petitioner fled away.

It has been submitted on behalf of the petitioner that the petitioner is named in the FIR but from perusal of the same the prosecution story appears to be false and fabricated in order to drag the petitioner due to village politics. As per FIR, it is evident that the date of occurrence is 01.11.2019 whereas the FIR was lodged on 04.11.2019 i.e. after causing the delay of 03 days without any reasonable explanation. It has been further submitted that in fact the reason for false implication of the petitioner by the informant in the present case is due to loan amount of Rs.20,000/- was taken by the father of the victim namely Jagantu Chauhan from the father of the petitioner namely Ashok Chauhan in the month of September, 2019 and when the amount was demanded back, then the father of the informant threatened to falsely implicate the petitioner in a criminal case and thus the present case was lodged. It is also mentioned here that the statement of victim given by way of



written report as stated in the FIR, the petitioner alone took her for committing wrong act whereas from the statement recorded u/s 164 Cr.P.C. on 06.11.2019 before the Judicial Magistrate, Kaimur (Bhabhua) she has said that in the evening of 01.11.2019 when she went to bring water from the Govt. Hand Pump and at that time 04 persons were present who were Abhishek Chauhan, Raju Chauhan, Gopi Chauhan and Pradum Chauhan and they caught her and took her to mountain side and in which three persons caught her hand and leg and the petitioner tried to act forcibly, which was seen by her maternal uncle (Mama). That the statement under Section 164 it will be evident that the same contradictory and inconsistent with respect to her earlier written statement given in the FIR and thus the whole prosecution story appears to be false, fabricated and after thought. As per FIR only the petitioner took the victim to a lonely place, whereas in her 164 Cr.P.C. statement four persons forcibly took her. The victim/informant was medically examined by the doctor and from the Medical Report dated 05.11.2019 the age of the victim/informant was found between 16 to 18 years. That from the external physical examination of the victim/informant no mark of violence was found over any part of her body, no white and red patches found over her under



garments. From the internal examination no any injury was found over her genital part, no spermatozoa either dead or alive was found and in the opinion of the doctor it has been observed that no recent sexual intercourse has been committed, however previous sexual intercourse cannot be ruled out. The petitioner is in custody since 05.11.2019 and has got no criminal antecedent.

Learned APP for the State has opposed the prayer for bail.

Considering the aforesaid facts and circumstances, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 20,000/- (rupees twenty thousand) with two sureties of the like amount each in connection with Bhabhua (Mahila) P.S. Case No. 75 of 2019 to the satisfaction of the learned Additional District and Sessions Judge-1st, Kaimur at Bhabhua, subject to the following conditions:

(1) One of the bailors will be his own blood relative, preferably, father, mother brother, sister and/or his wife.

(2) The petitioner shall not indulge himself in any similar offence till conclusion of the trial.

(3) 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 reasons, his bail bonds



shall be liable to be cancelled by the learned court concerned.

(4) The petitioner shall co-operate 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.

(Anjani Kumar Sharan, J)

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