

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM COURT'S CHAMBERS VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.5885 of 2020**

Arising Out of PS. Case No.-461 Year-2019 Thana- KORHA District- Katihar

MD. MANIR Son of Md Soyeb @ Sohebur Resident of Sonvarsha, P.S.-
Korha, District- Katihar, Bihar.

.. ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Sudha Chandra,Advocate
For the Opposite Party/s	:	Mr.Nand Kishore Prasad,APP
For the Informant	:	Mr.Anamul Haque,Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 14-10-2020 Heard learned counsel for the petitioner, Mr. Anamul
Haque and Mr. Nand Kishore Prasad, learned APP for the State.

The petitioner in the present case is seeking pre-arrest bail in connection with G.R. No. 5104 of 2019 arising out of Korha P.S. Case No. 461 of 2019 registered for the offences punishable under Sections 376, 504, 506, 34 of the I.P.C.

Learned counsel for the petitioner submits that this petitioner is the cousin brother of the informant. The allegation against the petitioner is that when the informant had gone to meet the call of nature during the evening time at 07:00 P.M. in the back of her house and in the bansbitti (a place where bamboo clamps are there in abundance) this petitioner came from behind, caught hold of her, tied her mouth forcefully and after felling her down on the earth he torn the clothes of the informant and committed rape on her. The informant claims that she kept on protesting but this petitioner



committed rape and when he left her then the informant shouted after removing the cloth from her mouth but by that time this petitioner had fled away.

Learned counsel points out that the occurrence is that of 06.11.2019 but the FIR has been lodged on 10.11.2019. It is his submission that in fact a false case has been registered against the petitioner with sole intention to compel him to marry the informant and this motive of the informant would be clear if her statement under Section 164 Cr.P.C. is gone into. In her statement under Section 164 Cr.P.C. she has alleged that this petitioner is the son of her uncle who is a reputed person and the informant has to marry the petitioner. In order to demonstrate a prima-facie case for grant of anticipatory bail learned counsel for the petitioner has placed before this Court some relevant materials and then the Court has also been requested to take cognizance of the materials present in the case diary.

Learned counsel submits that according to the informant she had gone to a place known as bansbitti where huge number of bamboo clamps are standing and such place is known as bansbatti in a village. If the informant was forcibly made to fell down in the said bansbatti on the earth, in all probability she will suffer some external bodily injury but in the medical examination report of the informant the doctor has not noticed any external injury of any kind on her body.



It is further pointed out that according to the informant this petitioner had forcibly torn her cloth (dori) and had put a gamcha to tie her mouth but the informant has not produced either the said gamcha or the clothes which were torn allegedly by this petitioner and thereafter the rape was committed. The another point which has been placed before this Court is that there is an allegation of commission of rape, the girl was examined by the doctor and in the medical examination report no mark of injury has been found in or around her external genitalia in fact the medical examination report has found the age of the informant between 18-19 years and learned counsel for the petitioner submits that in fact the observation of the doctor suggests that the girl had been used to sexual intercourse.

Learned counsel has submitted that the fact that the age of the informant was wrongly recorded in the FIR also suggests that a false case was prepared with an intention to pressurize the petitioner to marry and in fact the family members of the petitioner has lodged a Sanha apprehending such false implication when the father of the girl had refused to return the money which were provided to him by way of a loan. Such sanhas are available at Annexures '3' and '3/A' to this application.

Learned counsel for the informant while opposing the application for bail accepted in course of submission that the medical examination report is a proof of age of the victim girl. Learned counsel for the informant has not denied that the Aadhar Card of the



girl is showing 21 and half years of age on the alleged date of occurrence (Annexure '4').

Learned counsel for the informant could not contest the submission of the petitioner that the manner in which the alleged occurrence has taken place if the victim girl was forcibly made to fell down on the earth in the bansbitti, she would definitely suffer some kind of external injury on her body and in case of resistance during commission of rape there is possibility of sustaining injury on the private part of the body. Learned counsel for the informant is also unable to counter the submission that neither the torn clothes nor the gamcha were presented to the investigating officer.

Learned APP for the State has also joined learned counsel for the informant in course of submissions.

Having regard to the fact and circumstances of the case, the various submissions of learned counsel for the petitioner as noticed hereinabove, the age, relationships, materials in form of medical report in case diary, the place of occurrence and non-production of clothes, there being no plausible counter submission either on behalf of the State or the informant, and further that the petitioner has otherwise no criminal antecedent, this Court is inclined to grant privilege of anticipatory bail to the petitioner, let petitioner above-named in the event of his arrest or surrender within four weeks from today, be released on bail on furnishing of bail bond of Rs. 25,000/- (Twenty Five Thousand only) with two sureties of the like



amount each to the satisfaction of learned Chief Judicial Magistrate, Katihar in connection with G.R. No. 5104 of 2019 arising out of Korha P.S. Case No. 461 of 2019, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C. i.e.

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the 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;

(iii) a condition that the person shall not leave India without the previous permission of the Court.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner.

This application is allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

