

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6872 of 2020

Arising Out of PS. Case No.-13 Year-2019 Thana- MAHILA PS District- Gopalganj

KUNAL KUMAR S/o Ratan Chaudhary R/o Mohalla- Station Road, Near
D.A.V. High School, Gopalganj, Ward No. 25, P.S.- Gopalganj Nagar,
District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Lokesh Kumar Singh

For the Opposite Party/s : Mr.Mithlesh Kumar Khare

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

4 02-06-2020 The present case was heard at length on 28.5.2020 and
has been listed today for orders.

The petitioner seeks regular bail in connection with
Gopalganj Mahila P.S. Case No. 13 of 2019, registered for the
offence punishable under Sections 376(D), 323, 342 of the
Indian Penal Code and Section 4/ 6 of the POCSO Act, 2012.

The prosecution case in brief according to the FIR lodged
by one Rita Kumari is that on 17.9.2019, she had gone to
Gopalganj for watching Vishwakarma Puja and while she was
returning back to her home and had reached the lane near the
temple situated at Rajendra Nagar, six boys were present there,
who surrounded her. According to the informant, she had
recognized two boys, namely, Rajnish and Dilip, however, she
could not recognize other four boys. It is further alleged that the
said six accused persons had taken her into a room in the said
lane and committed rape with her.



The learned counsel for the petitioner has submitted that the petitioner is innocent, he is having a clean antecedent and he is languishing in custody since 17.12.2019. It is further submitted that the present case has been lodged belatedly inasmuch as the occurrence had taken place on 17.9.2019, however, the FIR has been lodged on 25.9.2019. It is stated that since the victim girl is major i.e. aged about 18 years, as also has been assessed to by the learned court below, POCSO Act is not applicable. Lastly, it is submitted that the medical report does not corroborate the alleged occurrence inasmuch as the medical report clearly depicts an opinion of the Doctor to the effect that there is no evidence of sexual assault.

Per contra, the learned counsel for APP for the State has vehemently opposed the prayer for bail.

I have heard the learned counsel for the parties and perused the materials on record as also the case diary including the statement of the victim girl made under Section 164 Cr.P.C. before the learned Magistrate. A bare perusal of the statement made by the victim girl under Section 164 of the Cr.P.C. before the learned Magistrate would show that she has only named two accused persons i.e. Rajnish and Dilip as the persons, who had raped her. However, the petitioner has not been named by the



victim girl to be one of the rapist. Moreover, a bare perusal of the medial report of the victim girl would show that there is no evidence of sexual assault on the victim girl. Thus, this Court finds that prima facie, there is no material to connect the petitioner with the alleged crime, hence, this Court deems it fit and proper to direct for release of the petitioner on bail upon him furnishing personal bond to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act and POCSO Act), Gopalganj in connection with Gopalganj Mahila P.S. Case No. 13 of 2019.

It is further directed that once the lock-down is over and normal situation is restored, the petitioner, above named, shall furnish bail bonds of a sum of Rs. 10,000/- with two sureties of the like amount each, within a period of four weeks, to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act and POCSO Act), Gopalganj in connection with Gopalganj Mahila P.S. Case No. 13 of 2019, failing which the present privilege of bail being extended to the petitioner shall stand revoked automatically.

The present petition stands allowed.

(Mohit Kumar Shah, J)

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