

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.11400 of 2020**

Arising Out of PS. Case No.-14 Year-2019 Thana- MAHILA PS District- Jehanabad

Abinash Kumar, S/o Shashikant Sharma @ Shashikanta Sharma, R/o village-
Mirzapur, P.S.- Sakurabad, District- Jehanabad

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s :	Mr.Uma Shankar Sharma, Advocate
For the Opposite Party/s :	Mr.Ramchandra Sahni, A.P.P.
For the Informant :	Mr. Shiw Kumar Prabhakar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 02-06-2020 This application has been placed for consideration by

the order of the Hon'ble the Chief Justice through virtual court
proceeding.

Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel for the informant.

Petitioner in the present case is seeking regular bail in
connection with Jehanabad Mahila P.S. Case No. 14 of 2019
registered for the offences punishable under Section 376(D) of
the Indian Penal Code later on Section 4 of POCSO Act is also
added.

Learned counsel for the petitioner submits that
according to the First Information Report lodged on 17.03.2019
by the father of the victim girl, the victim girl had gone to



participate in a 'Yagya' in village Mirzapur where one of the daughters of the informant is married. It is alleged that both the sisters had gone to participate in the 'Yagya' on 16.03.2019 at about 8.00. P.M. and for the purpose of 'Arti' when the victim girl was going to bring money from the house of her sister, three boys including this petitioner lifted her and took her to the cabin situated nearby 'Khalihan'. It is alleged that one of the accused pressed her mouth, the second accused committed rape on her and the third one was watching the persons going from the nearby areas. She claimed that she can identify the accused. It is alleged that the victim girl came weeping to her sister and informed her about the alleged occurrence. The son-in-law of the informant gave him information about this occurrence and thereafter the informant came and lodged the First Information Report on the next day of the occurrence.

Learned counsel submits that neither the victim girl nor her sister to whom she explained the alleged occurrence lodged the F.I.R. The son-in-law of the informant also did not go to the Police Station. The informant came on the next day of the occurrence and lodged the F.I.R. giving the name of the accused persons but thereafter on 18.03.2019 when the victim girl made her statement under Section 164 Cr.P.C. she did not name this



petitioner and she called the three accused persons as first, second and third person. The victim girl claimed in her statement under Section 164 Cr.P.C. that she went to her sister after the alleged occurrence and narrated the entire story. The victim girl also claimed that she can identify the three persons but on perusal of the case diary it would appear that the sister of the victim girl has in her statement in paragraph '5' stated that the victim girl did not disclose her on that night that she was raped. Sister of the victim girl has said that the victim had concealed this fact from her in the night.

Learned counsel further submits that the son-in-law of the informant has also made statement in course of investigation and in his statement also he has stated that during the night hours his sister-in-law had though stated that three boys had caught her but did not disclose the alleged occurrence.

Learned counsel further submits that the another circumstance which may be noticed would appear from the medical examination report of the victim girl. On 17.03.2019 the medical board comprising at least four Doctors of the Sadar Hospital, Jehanabad had examined the victim girl. In their observation the medical board recorded that there was no internal or external injury present. There was no foreign body in



the private part of the victim and as regards the status of sexual contact the medical board recorded “No evidence of sexual contact is present.” The vaginal swab report also disclosed that there was no spermatozoa.

Learned counsel submits that the victim girl has been assessed about 17-19 years, the fact that the medical board did not find any sign of sexual contact and that some of the witnesses have stated in course of investigation that the sister, brother-in-law and the father of the victim girl had been trying to negotiate the marriage of the victim girl with this petitioner but when not finalized the present case has been concocted.

Learned A.P.P. for the State as well as learned counsel for the informant have opposed the prayer for regular bail of the petitioner. Learned counsel, however, admit in course of hearing that even though in her statement under Section 164 Cr.P.C. the victim girl did not name the petitioner and claimed that she can identify the accused persons, till date the petitioner has not been identified by the victim girl.

Having heard learned counsel for the petitioner, learned A.P.P. for the State and learned counsel for the informant and on perusal of the records considering the materials as notice above by this Court, the fact that the medical



examination report of the victim girl was prepared on the very next day of the alleged occurrence and within less than 24 hours but no sign of sexual contact has been noticed, no internal or external injury or any foreign body has been found in the private part of the victim girl and the further fact appearing from the statement of the sister and brother-in-law of the victim girl saying that the victim girl had not disclosed about the alleged occurrence of rape in the night either to her sister or to her brother-in-law and even one day after lodgement of the First Information Report the victim girl did not name this petitioner specifically in her statement under Section 164 Cr.P.C., this petitioner has remained in custody over six months, investigation is complete and there is no submission of the State that the release of the petitioner is in any way likely to interfere with trial as the victim girl is from another village, this Court directs release of the petitioner above named on bail in connection with Jehanabad Mahila P.S. Case No. 14 of 2019 on furnishing of bail bond of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J.-1st, Jehanabad, 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.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the petitioner.

This application is allowed.

(Rajeev Ranjan Prasad, J)

vats/Rajeev

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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'.

