

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8117 of 2020

Arising Out of PS. Case No.-79 Year-2019 Thana- DHAMDAHA District- Purnia

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1. MD. MOIM Son of Ali Hasan Miya Resident of Village - Neerpur, P.S.- Dhamdaha, District- Purnea
 2. Md. Gulam Rasul @ Md. Rasul Son of Late Md. Jumrati Miya Resident of Village - Neerpur, P.S.- Dhamdaha, District- Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Anand

For the Opposite Party/s : Mr.Ram Naresh Ray

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 22-06-2020 The present case was heard on 19.6.2020 at length and today, it has been placed before this Court for orders.

This is an application for grant of anticipatory bail in connection with Dhamdaha P.S. Case No. 79 of 2019 registered for the offence punishable under Sections 448, 341, 323, 376, 504 and 506/34 of the Indian Penal Code.

The case of the prosecution in brief is that on 14.3.2019 at about 12:00 in the night, the informant was sleeping in her house and suddenly, co-villagers including the petitioners herein entered the house, whereafter, the petitioner no. 1 is alleged to have pointed gun on the forehead and the petitioner no. 2 had stuffed cloth in the mouth of the informant, whereafter, the co-accused person, namely, Md. Jibrail had raped the informant. On



alarm being raised, the mother of the informant reached there, however, the accused persons pushed her and fled away, whereafter, upon alarm being made by the mother of the informant, other accused persons had arrived there and threatened her as also assaulted the members of the prosecution party.

The learned senior counsel for the petitioners has submitted that since the co-accused person, namely, Md. Jibrail has lodged one Damdaha P.S. Case No. 73 of 2019 on 19.3.2019 against the family members of the informant alleging therein that the accused persons had abetted unnatural sex with the son of the informant of that case, a false and fabricated case has been filed by the informant of the present case. It is further submitted that the petitioners are innocent, they have been falsely implicated in the present case and they are having a clean antecedent. It is also submitted that though the date of occurrence has been mentioned as midnight of 14.3.2019, however, the FIR has been lodged only on 22.3.2019 belatedly, i.e. after lodging of the FIR by the accused side against the members of the prosecution party.

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



Having regard to the facts and circumstances of the case, considering the submissions advanced by the learned senior counsel for the petitioners and taking into account the materials available in the case diary as far as the petitioners herein are concerned, prima facie, their complicity in the alleged crime does not appear to be present and moreover, even the victim girl has not stated that the petitioners had committed rape with her, apart from the fact that the Doctor has clearly opined, upon examination of the victim girl that there is no sign of rape, hence, I deem it fit and proper to admit the petitioners to the privilege of anticipatory bail.

Accordingly, the petitioners are directed to be enlarged on anticipatory bail, in the event of their arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) each with two sureties of the like amount each to the satisfaction of learned C.J.M., Purnea in connection with Dhamdaha P.S. Case No. 79 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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