

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8175 of 2020

Arising Out of PS. Case No.-133 Year-2018 Thana- SARMERA District- Nalanda

SURAJ KUMAR Son of Upendra Paswan Resident of Village - Chhoti Ghariyari, Police Station - Sarmera, District - Nalanda.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh

For the Opposite Party/s : Mr. Mohammed Arif

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 19-06-2020 The present case was heard at length on 18.06.2020 and it has been listed today under the heading “For Orders”.

The petitioner apprehends his arrest in connection with Sarmera P.S. Case No. 133 of 2018, for the offence punishable under Section 376 and other allied sections of the Indian Penal Code and section 3 of the POCSO Act.

The case of the prosecution according to the complainant/ informant Aarti Kumari, is that on 01.06.2018 at about 12 in the night, while the complainant/ informant was sleeping in her house, the petitioner by scaling over the roof of the house entered into the room of the informant, gagged her mouth by means of his Gamchha (towel), opened her salwar and committed rape. The informant is stated to have identified him in the light of bulb, whereafter the petitioner fled away, but



his belt was left in the house of the informant.

The learned counsel for the petitioner has submitted that the petitioner is innocent, has been falsely implicated in the present case and is having a clean antecedent. It is further submitted that the age of the victim girl has been assessed by the Medical Board to be in between 17-18 years. It is further submitted, by referring to Annexure-2, the report of the Medical Board constituted for examination of the victim girl for the purposes of age determination, that the victim girl has refused to get herself medically examined which shows that the case as propounded by the victim girl is not true. The learned counsel for the petitioner has further referred to the statement of the sister of the victim girl, recorded in paragraph-6 of the case diary, to state that she does not know as to where the victim girl stays in Bihar Sharif. The learned counsel for the petitioner has also referred to paragraph no. 9 of the case diary wherein the statement of Pinki Devi, Sarpanch, has been recorded, to show that the victim girl is married and 5-6 months back quarrel had taken place in between the two families. It is submitted, by referring to paragraph No.44 of the case diary that the victim girl has refused to get herself medically examined, which shows the falsity of the case and the allegation levelled by the



victim girl.

The learned A.P.P. appearing for the State has vehemently opposed the prayer for anticipatory bail.

Having regard to the facts and circumstances of the case and considering the materials on record and upon perusal of the case diary, this Court finds that neither the victim girl has got herself medically examined, despite the police having approached her, nor she has made herself available for recording her statement under section 164 Cr. P.C., which is apparent from paragraph no. 76 of the case diary, wherein the police had visited the house of the victim girl whereupon the younger sister of the informant has told the police that now, she is not residing in the said village, nonetheless, the police had served a written notice on the younger sister of the victim girl for the purposes of recording statement of the victim girl under section 164 Cr. P. C. It is thus apparent that though, the victim girl has alleged commission of rape by the petitioner but the attending circumstances and the materials available in the case diary, *prima facie* creates a doubt about the veracity of the case, as propounded by the victim girl in her complaint, especially on account of her reluctance in getting herself medically examined as also in not appearing before the learned Magistrate for



recording her statement under section 164 Cr. P.,C., hence this Court deems it fit and proper to extend the benefit of doubt to the petitioner herein for the purposes of grant of anticipatory bail, thus this Court directs for admitting the petitioner to the privilege of anticipatory bail.

Accordingly, in the event of arrest or surrender before the learned court below within a period of four weeks from today, the petitioner, above-named, shall be released on anticipatory bail on furnishing bail-bonds of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge, Nalanda at Biharsharif in connection with Sarmera P.S. Case No. 133 of 2018, subject to the conditions as laid down under Section 438(2) Cr. P. C.

(Mohit Kumar Shah, J)

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