

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8369 of 2020**

Arising Out of PS Case No.-35 Year-2019 Thana- MAHILA P.S. District- Muzaffarpur

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Heera Sahani @ Hira Sahni, aged about 30 years, Gender-Male, Son of Baskit Sahani, Resident of Village - Chhajan, Harishankar, P.S.- Kudhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Nandan, Advocate

For the State : Mr. Anil Kumar Singh No. 1, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 09-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Ravi Nandan, learned counsel for the petitioner and Mr. Anil Kumar Singh No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.



3. The petitioner is in custody in connection with Mahila PS Case No. 35 of 2019 dated 02.06.2019 instituted under Sections 376, 323 and 341 of the Indian Penal Code and 4/6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter after referred to as the 'Act').

4. The allegation against the petitioner is that he had attempted rape on the minor daughter of the informant.

5. Learned counsel for the petitioner submitted that the FIR has been lodged after two days of the incident, as the incident is said to have occurred on 31.05.2019, whereas the FIR has been lodged on 02.06.2019. Learned counsel submitted that in the medical examination of the girl done on 03.06.2019, the doctors have opined that she is aged 19-20 years. It was submitted that due to this police have not found the case true under the Act. Learned counsel submitted that in the vaginal swab, no spermatozoa has been found and the Medical report has found the hymen to be old ruptured and also no sign of rape has been found. It was further submitted that the petitioner is in custody since 18.09.2019. Learned counsel submitted that he has been falsely implicated due to land dispute.

6. Learned APP, from the case diary, submitted that many witnesses had seen the petitioner running away from the



place of occurrence and that the medical report has only stated that it was difficult to give a finding that rape was committed. Learned counsel submitted that the explanation for the delay is very practical as the informant, who is father of the victim girl, has stated that he was away from the house and when he returned, he had first gone to the house of the petitioner to confront him, from where he was chased away and, thus, he had gone to the police and lodged the FIR. It was further submitted that after three days, as it is, there can be no question of finding any spermatozoa. Learned counsel submitted that even otherwise, it cannot be believed that there would be false implication by a father who would allege that the daughter had been raped, as the same has put a permanent stigma on the reputation of the daughter. Learned counsel submitted that the police during investigation have not found any land dispute between the parties and, thus, there cannot be any question of false implication. It was submitted that even if the girl was aged over 18 years, it did not give the petitioner a right to commit rape. Learned counsel submitted that in the statement to the Court under Section 164 of the Code of Criminal Procedure, 1973, the girl has categorically stated that the petitioner had forcibly committed rape.



7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on bail.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P.Kumar/Anand Kr.

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