

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.11378 of 2020**

Arising Out of PS. Case No.-164 Year-2019 Thana- MAHILA P.S. District- Bhojpur

MD. NASIM @ MD. NASIM ALI Son of Md. Basropan @ Basropan Mia
Resident of Mohalla-Ojha Bazar, Jagdishpur, Police Station-Jagdishpur,
District-Bhojpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Nil Kamal, Advocate

For the Opposite Party/s : Mr. Pranav Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 13-07-2020 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner, in the present case, is seeking regular bail in connection with POCSO Case No. 76/2019 arising out of Ara Mahila P.S. Case No. 164 of 2019 registered for the offences under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

Learned counsel for the petitioner submits that according to the prosecution story the victim girl had gone to the shop of the petitioner on 21.10.2019 for repairing of the Bulb, this petitioner took her inside the shop and committed rape upon her. It is alleged that the petitioner had also threatened that she would not tell the occurrence to her brother otherwise he would also be killed. It is stated that on the said date the



victim girl returned her house but she did not inform about the alleged occurrence, on 23.10.2019 when Bua of this petitioner visited his house, in front of her the victim girl started weeping and told the whole occurrence.

Learned counsel for the petitioner submitted that it is a case of false implication, the Bua of this petitioner is an active member of a party, she has made out this case just to harass this petitioner, who belongs to minority class of the area.

Learned counsel for the informant submits that in course of investigation police has submitted a charge-sheet but no independent witness has come to say that the victim girl had ever been seen in the shop on the said date and time and/or that she was going from the shop in any unusual condition on 21.10.2019. Learned counsel further submits that the medical examination report clearly shows that there was no injury on any vital part of the body. The vaginal swab was also sent to the Pathologist, and according to the report, no spermatozoa was found either alive or dead i.e. negative. Learned counsel submits that the fact that there was no injury on any part of the body and the medical examination report does not suggest any sexual assault on the victim only indicate that it is a case of false implication. It is further submitted that the police has already



submitted a charge-sheet but the trial is not likely to be concluded in near future and the petitioner who has otherwise no criminal antecedent be released on bail on the such terms and conditions imposed against him.

Learned A.P.P. for the State has opposed the prayer for regular bail of the petitioner. It is submitted that there are allegations against the petitioner in the First Information Report.

Having regard to the facts and circumstances of the case and the materials available on the record, this court has noticed that although not only the First Information Report has been lodged two days after the alleged occurrence, in the case diary no independent witness has come to say that the victim girl was ever seen at the shop of the petitioner which is situated in a crowded place and market area and further that the medical examination report does not show any injury on any part of her body, police has already submitted charge-sheet against the petitioner but the trial is not likely to be concluded in near future and it is not the submission of the State that release of the petitioner is likely to interfere adversely with the course of trial or the petitioner may tamper with the evidence, following the basic principles of criminal jurisprudence that an undertrial cannot be continued in incarceration as a convict, this Court



directs release of the petitioner above-named on bail in connection with POCSO Case No. 76/2019 arising out of Ara Mahila P.S. Case No. 164 of 2019 on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction learned 1st Additional Sessions Judge, Bhojpur, Ara, subject to the conditions as laid down under Section 437(3) of the 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, or 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.

(Rajeev Ranjan Prasad, J)

Rajeev/Arvind

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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'.

