

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.11408 of 2020**

Arising Out of PS. Case No.-159 Year-2019 Thana- PHULWARIA District- Begusarai

Md. Nafa Hussain @ Nafa Hussain @ Suko @ Sukho, Son of Yunus Miyan
@ Md. Yunus @ Munna @ Md. Munna, Resident of Village - Shokhara -1,
Ward No. 12, P.S. Phulwaraiya, District -Begusarai.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Sandip Kumar Gautam, Advocate

For the Opposite Party/s : Mr.Abhay Kumar, A.P.P.

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

5 17-06-2020 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel representing the
informant.

Petitioner in the present case is seeking regular bail in
connection with Phulwariya P.S. Case No. 159 of 2019
registered for the offences punishable under Sections 366(A),
366 of the Indian Penal Code.

Learned counsel for the petitioner submits that in the
First Information Report it is alleged that this petitioner was
establishing physical relationship with the victim girl-informant
on the pretext of marriage for last two years but when she asked
him to marry her, he refused to marry. It is alleged that the
father of the petitioner was also helping him and when this fact



was brought to the notice of the informant's father and a request was made to marry him with the informant, he refused to arrange marriage and asked the father of the informant to go away.

Learned counsel submits that it is evident from the First Information Report itself that both the informant and the petitioner are co-villagers and the whole purpose behind lodgement of the present F.I.R. is to put pressure upon the petitioner and his family to marry the informant.

It is submitted that in fact the family of the informant wanted to marry the victim girl with the petitioner as they were of the view that both are having love affair but when the family of the petitioner did not agree for the marriage, the present case has been lodged. Learned counsel points out from the statement made in paragraph '7' that against the alleged threat, the petitioner has filed a Complaint Case No. 2166 of 2019 dated 16.11.2019 in the court of learned C.J.M., Begusarai.

Learned counsel submits that in course of investigation no independent witness/co-villager has come forward to support the prosecution case and no boy has said that the petitioner and the victim girl were seen together earlier. No witness has said that there was any talk of physical relationship



between the petitioner and the victim girl.

Learned counsel submits that during the investigation only the family members of the victim girl have stated that they were told about the relationship by the victim girl. Pointing out to the medical examination report which is annexed with the case diary, learned counsel for the petitioner submits that the Medical Board examined the victim girl and found no injury on any part of the body, no seminal stain on genitalia and thighs, no injury on genitalia, Hymen lax and the vaginal swab was sent to pathologist for examination of spermatozoa but no spermatozoa was found. In the opinion of the Medical Board there was no evidence of recent sexual assault in the patient.

Learned counsel submits that the petitioner has remained in custody for six months and even after completion of investigation if there is no independent witness to support the allegations and the Medical Board is also not opining about the alleged sexual act, a prolonged incarceration of the petitioner in the custody is not likely to come in aid of investigation or prosecution. It is further submitted that the under trial such as the petitioner is not required to be kept in jail as a punishment.

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. It is submitted that the victim girl has made statement that she was being in physical relationship with the petitioner for last two years but when she asked him to marry her, he refused.

Learned counsel for the informant, however, could not point out any statement of an independent witness of the village who could have supported the prosecution version and the only statement which has come in the case diary is of the relatives of the victim girl and a neighbour and all of them have said that they came to know about the relationship from the victim girl.

Having regard to the facts and circumstances of this case, where this Court has noticed from the materials available on the record that the victim girl has made statement that she was in relationship with the petitioner for last two years but the petitioner refused to marry her and even his parents did not agree for the same whereafter the present case has been lodged but save and except the statement of the victim girl there is neither any independent material nor the Medical Board's opinion supports any sexual assault against the victim girl, the petitioner has remained in custody for six months, investigation against him is complete and there is no submission that his release at this stage is likely to adversely interfere with the



course of trial, keeping in mind the basic jurisprudence of the criminal law justice that provision is bail not jail and further incarceration of the petitioner is not likely to aid investigation or help the prosecution, this Court directs the release of the petitioner above named in connection with Phulwariya P.S. Case No. 159 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 Sri Rajeev Kumar, learned Judicial Magistrate 1st Class, Begusarai, 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 after his release he would not do any such act and deed which may create any



hindrance in the smooth progress of the trial.

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)

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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'.

