

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 14301 of 2020

Arising Out of PS Case No.-456 Year-2019 Thana- KAHALGAON District- Bhagalpur

Sonu Sharma @ Sonu Kumar Sharma (Male), aged about 18 years, Son of Jay Prakash Sharma, Resident of Village-Baijutola, Police Station-Kahalgaon, District-Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 15-06-2020

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

2. Heard Mr. Praveen Kumar, learned counsel for the petitioner and Mr. Akhileshwar Dayal, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner is in custody in connection with POCSO Case No. 79 of 2019 arising out of Kahalgaon PS Case No. 456 of 2019 dated 16.07.2019 instituted under Sections 376, 511 and 323 of the Indian Penal Code and 8 of the Protection of Children from Sexual Offences Act, 2012.

4. The allegation against the petitioner and two others is of making the informant and her elder sister naked and trying to outrage their modesty.



5. Learned counsel for the petitioner submitted that the story is totally false and fabricated. It was submitted that the informant's father is dead and she stays with his uncle who indulges in illegal trade of liquor which is regularly objected by the father of the accused due to which this false case has been lodged. Learned counsel submitted that the story is unbelievable for the reason that it is alleged that at 5:00 PM on 15.07.2019, in the orchard next to the Hero Honda showroom, the incident occurred where the petitioner and other two accused are initially said to have harassed the victim and her sister and later are said to have tied their hands and taken off their clothes and having tried to commit rape. It was submitted that the story is unbelievable, since 15.07.2019, which is the alleged date of occurrence, was a Monday, which being a working day, the Hero Honda showroom would have been open and there would have been people around at 5:00 PM. It was submitted that thus, it cannot be expected that in a busy place, this incident would occur and also there is no mentioning as to how the informant and her sister saved themselves when it is said that their hands were tied by their *dupatta* and attempt was made to commit rape. Learned counsel submitted that there being no explanation as to how the girls saved themselves, in the aforesaid background, the whole story is clearly



patently false. Learned counsel submitted that in the statement to the Court, under Section 164 of the Code of Criminal Procedure, 1973, the story has been changed, inasmuch as, the informant has stated that after she and her elder sister were made naked and the accused, including the petitioner, had taken their photograph on mobile phone and had threatened them of dire consequences, but there is no allegation of there being attempt to commit rape. It was further submitted that there has been no medical examination of the victim girl. Learned counsel submitted that the petitioner is a young boy of 18 years and has no other criminal antecedent and is in custody since 06.11.2019.

6. Learned APP submitted that the victim has stated with regard to the petitioner being involved in undressing the victim and her sister and also trying to commit rape. However, he could not controvert the fact that in the statement under Section 164 of the Code of Criminal Procedure, 1973, there is no allegation of there being attempt to commit rape and it has only been stated that their photographs were taken on the mobile and that the girls were threatened.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, let the petitioner be released on bail upon furnishing bail bonds of Rs.



25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-Bhagalpur -cum- Special Judge POCSO Act, Bhagalpur in POCSO Case No. 79 of 2019 arising out of Kahalgaon PS Case No. 456 of 2019 subject to the conditions (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond with regard to good behaviour of the petitioner, and (iii) that the petitioner shall also give an undertaking to the Court that he shall not indulge in any criminal activity, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of his bail bonds.

8. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P.Kumar/Anand Kr.

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