

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.26202 of 2020**

Arising Out of PS. Case No.-149 Year-2019 Thana- JANTA BAZAR District- Saran

Prakash Ojha @ Prakash Kumar Ojha S/o Ram Narain Ojha Resident of
Village- Persa Phulwaria, P.S.- Gorkha, District- Saran, Bihar.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Avanish Kumar Singh,Advocate

For the Opposite Party/s : Ms.Pushpa Sinha, APP

For the Informant : Mr. B.M.K. Sinha, Advocate

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

4 14-12-2020 Heard learned counsel for the petitioner, Ms. Pushpa Sinha, learned APP for the State and Mr. B.M.K. Sinha, learned counsel for the informant.

The petitioner in the present case is seeking regular bail in connection with Janta Bazar P.S. Case No. 149 of 2019 registered for the offence punishable under Sections 363, 366(A) of the Indian Penal Code.

Learned counsel for the petitioner submits that in the present case the petitioner who is devar of the elder sister of the informant has been falsely framed by making a concocted story. It is submitted that the elder sister of the informant is not having a good matrimonial relationship with the brother of this petitioner and because of the matrimonial discord she had lodged one case being Mahila P.S. Case No. 49 of 2019 dated



03.10.2019 under various Sections of the Indian Penal Code including Section 498A against the entire in-laws family. In the said case all the accused persons have been granted bail.

Learned counsel submits that during this period when the matrimonial discord had taken place the present FIR has been lodged on 06.09.2019 alleging therein that the younger sister of the informant who is aged about 17 years was missing since 26.06.2019. The informant claimed that he and his family members went in search of his younger sister but she could not be found. He further informed that his sister was carrying a mobile with Airtel SIM but it was alleged that someone with bad intention had brainwashed his sister and had taken her away for committing some illegal act. The informant prayed for proper legal action in the matter.

Learned counsel submits that on perusal of the FIR it would appear that it was lodged by the informant after about two and half months approximately since the date of missing of his sister. On the date of lodgement of the FIR he did not raise any suspicion against this petitioner and he has categorically stated that his sister seems to have been allured and taken away for some wrong act.

Learned counsel submits that although the father of



the informant was very much present at the local place but no information regarding missing of the girl was given for about two and half months which cannot be said to be a normal conduct.

It is further submitted that the victim girl was in love with somebody who was able to convince her to run away and, therefore, the informant's family were fully aware that it is not a case of kidnapping and so no FIR was lodged.

It is further submitted that during investigation the Saran Police was informed that the victim girl was living in a village at Behara Muzawar, Unnao in the State of Uttar Pradesh thereafter the Officer Incharge Behara at Unnao was contacted and on requisition made the victim girl was recovered from Behara Muzawar, Unnao.

At this stage, it is alleged that the victim girl made a statement under Section 164 Cr.P.C. before the Judicial Magistrate, Saran at Chapra in which she alleged that while she had gone for her coaching to Sajidpur, this petitioner who is devar of her sister along with his maternal uncle threw a towel on her face and kidnapped her and thereafter she was kept at Chapra where they raped her for two months and her mobile phone was broken. She alleged that she was given intoxicated



injections and was taken to Punjab where she was sold to a person called Sanjay, the said person had raped her and told her that they had a court marriage and he had paid Rs.2,50,000/- to procure her. The victim girl stated further that she took the help of a local girl in Punjab to call her brother Bhuneshwar Tiwari who thereafter came to Punjab, rescued her and brought her to Saran at Chapra.

Learned counsel submits that in the background of the matrimonial dispute between the elder brother of this petitioner and the sister of the victim girl, if the complete materials are considered it would appear that the statement of the victim girl recorded on 02.01.2020 under Section 164 Cr.P.C. is highly conflicting and at first instance it is liable to be thrown out and rejected.

It is submitted that according to the victim girl she had told about a court marriage and if this is seen with Annexure '5' series which is the application submitted by the victim girl and one Tarlok with whom she had married, it would appear that both of them had solemnized marriage and in this regard they had submitted their applications in the Court of learned Principle Judge, Family Court at Unnao. There are notarized documents showing both Tarlok and the victim girl duly photographed and



their signatures on the documents showing that they had solemnized marriage. The said Tarlok had submitted an application to the Chairman of Women Commission, Patna Bihar in which he has alleged that he was married with the victim girl on 17.07.2019 according to Hindu rites and customs and that the victim girl had come with him after she was thrown out from her house as she had refused to marry with the boy of the choice of her brother Annexure '6' (series) is the application of said Tarlok who had alleged that the brother and uncle of the victim girl had forcibly took her with themselves and in this regard he had written letter to the Superintendent of Police, Chapra as well.

Learned counsel submits that the entire materials on the record shows that the story is something different and the victim girl is now making statements at the behest of her brother (informant) only with an order to falsely implicate this petitioner.

Learned APP for the State has after going through the case diary on the query made by this Court has specifically stated that in the case diary there is no material to corroborate the statement of the victim girl as disclosed under Section 164 Cr.P.C. In her statement though she has stated that she was



brought by her brother from Punjab and that she had given a call to her brother with the help of a girl but no such call detail has been collected by the I.O. and then she has not even disclosed that when she was brought from Punjab.

Learned counsel for the informant has opposed the prayer for regular bail of this petitioner alleging that there are allegations that he along with his uncle had kidnapped the victim girl and had kept her confined for two months and they had also committed rape.

Considering the facts and circumstances of the case, wherein from the materials available on the record, this Court has noticed that the FIR itself was registered after two and half months and there is no call details collected by I.O. to corroborate to show that the victim girl had given a call to her brother (informant) and then from the case diary it appears that on some information collected by the I.O., a requisition was made to Behara Muzawar Unnao Police Station where the victim girl was living and then she was brought from there and there are enough materials on the record in the form of her signed application filed before the family court at Unnao, affidavits with photographs showing that she had married to a boy of her choice and then the said boy had complained to the



Superintendent of Police, Chapra as also the women Commission at Patna that his wife (victim girl) has been forcibly taken away by her brother and uncle, there being no material in the form of any independent witness suggesting that any such alleged occurrence had taken place on a busy road where the coaching institute of the victim girl is said to be situated and from where she was allegedly abducted by throwing towel on her face, nobody coming to support such allegations, let the provisional bail granted to the petitioner vide order dated 12.10.2020 be confirmed. Let the petitioner be allowed to remain on bail on the same bail bond subject to the conditions already indicated in the order.

This application is disposed of accordingly.

(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'.

