

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28831 of 2020

Arising Out of PS. Case No.-10 Year-2020 Thana- MAHILA P.S. District- Patna

VIKASH @ VIKASH KUMAR @ VIKASH KUMAR SINGH S/o Sanjay Singh Resident of Village-Badpur, P.O-Malpur, P.S-Maranchi, District-Patna
At present Resident of Mohalla-Gola Road, Priyadarsh Nagar, P.S.-Rupaspur, District-Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Madhu Prasun

For the Opposite Party/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 15-12-2020 Heard the learned counsel for the petitioner and the learned APP for the State.

The petitioner seeks regular bail in connection with Mahila P.S. Case No. 10 of 2020 corresponding to GR No. 352 of 2020, registered for the offence punishable under Sections 376D/323 of the Indian Penal Code and Section 27 of the Arms Act.

The case of the prosecution in brief is that when the victim girl was in G.V. Mall in a cafe at about 7:30 pm. on 06.01.2020, the co-accused person, namely, Vinayak Singh, who was sitting there from before, had called her on his side to talk with her, whereafter, she had gone near the



parking where the said Vinayak Singh came with his car and pointed a pistol near her stomach and told her to sit in the car since he wanted to talk to her for five minutes, whereafter, his two friends also came there and then, the said Vinayak Singh had forcibly made the victim girl / informant sit inside the car and had locked the car. It is further alleged that the victim girl was thereafter taken towards P & M Mall at Patliputra and was then taken to a flat where the said Vinayak Singh had raped her and a video was made and when she tried to run away, the co-accused person, namely, Sandeep Mukhiya, showed her the video and told her to let him also rape her, failing which he would make the video viral. It is also alleged that thereafter, the informant was made to sit in the car and was dropped on the road. The informant has also disclosed the name of the petitioner and one Kush to be also present amongst the kidnappers.

The learned counsel for the petitioner has submitted that the petitioner is innocent and he has been falsely implicated in the present case. It



is further submitted that there is no allegation of any sort of misdeed having been committed by the petitioner and as far as allegation of commission of rape is concerned, the same has been levelled against Vinayak Singh and if any sort of misdeed has been committed, the same has been alleged to have committed by the co-accused person, namely, Sandeep Mukhiya. It is submitted that similarly situated co-accused person, namely, Kush, has already been granted the privilege of regular bail by a coordinate Bench of this Court vide order dated 31.08.2020 passed in Criminal Miscellaneous No. 18694 of 2020.

Per contra, the learned APP has vehemently opposed the prayer for bail.

Having heard the learned counsel for the parties and having considered the materials available on record as also those available in the case diary, this Court finds from a bare perusal of the statement made by the victim girl under Section 164 Cr.P.C. before the learned Magistrate that she has clearly stated that she had come for



her studies from Gopalganj to Patna and is studying in second year of BBA course and as far as Vinayak Singh is concerned, she does not know him properly, however, he has a gang comprising of Sanjeet Mukhiya and the petitioner herein. In the said statement, the victim girl has further alleged that since past three days, immediately before the occurrence, the said Vinayak singh was proposing to her, outside the JV Mall, however, she had rejected the same, whereafter, on the alleged date of occurrence, the said Vinayak Singh along with his friends had kidnapped her and taken her to a flat in an apartment and the said Vinayak Singh had raped her and a video of the said incident of rape was also made, whereafter, the co-accused person, namely, Sandeep Mukhiya, had also threatened her that if she did not permit him to rape her, he would make the video viral. It is also alleged that subsequently, the informant was made to sit in a car, thereafter, she was thrown on the road. A bare perusal of the materials available in the case diary also shows that the petitioner has



been alleged to be a member of the gang of the main co-accused, Vinayak Singh and in fact, the victim girl has stated that she was kidnapped by the accused persons including the petitioner herein and she came to know their name during the course of the said occurrence, meaning thereby that the petitioner was also present as participant at the time of kidnapping of the victim girl, which also stands corroborated from the confessional statement of the aforesaid Vinayak Singh and Sandeep Kumar, thus, I do not find any merit in the present petition. Accordingly, the present petition stands dismissed, however, with liberty to the petitioner to renew his prayer for bail after 18 months, in case there is no progress in the trial.

At this juncture, it would be relevant to state that it is a well-settled law that parity cannot be the sole ground for granting bail. In this connection, this Court would rely on a judgment dated 12.03.2001, rendered by the Hon'ble Apex Court in the case of **Rakesh Kumar Pandey vs. Munni Singh**, bearing SLP (Criminal) No. 4059 of



2000, relevant portion whereof is being reproduced
hereinbelow:-

"The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused-respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier."

"Suffice it to say that for a serious charge where three murders have been committed in broad day light, the High Court has not applied its mind to the relevant materials, and merely because some of the co-accused, whom similar role has been ascribed, have been released on bail earlier, have granted bail to the present accused respondents. It is true that State normally should have moved this Court against the order in question, but at the



same time the power of this Court cannot be fettered merely because the State has not moved, particularly in a case like this, where our conscience is totally shocked to see the manner in which the High Court has exercised its power for release on bail of the accused respondents. We are not expressing any opinion on the merits of the matter as it may prejudice the accused in trial. But we have no doubt in our mind that the impugned order passed by the High Court suffers from gross illegality and is an order on total non-application of mind and the judgment of this Court referred to earlier analysing the provisions of sub-section (2) of section 439 cannot be of any use as we are not exercising power under sub-section (2) of section 439 Cr.P.C."

This Court would also refer to yet another judgment rendered by the Hon'ble Apex Court in



the case of ***Mauji Ram vs. State of UP & Another***, reported in (2019) 8 SCC 17, paragraph no. 12 whereof is reproduced hereinbelow:-

"**12.** Time and again this Court has emphasised the need for assigning the reasons while granting bail [see *Ajay Kumar Sharma v. State of U.P.* [*Ajay Kumar Sharma v. State of U.P.*, (2005) 7 SCC 507 : 2005 SCC (Cri) 1702] , *Lokesh Singh v. State of U.P.* [*Lokesh Singh v. State of U.P.*, (2008) 16 SCC 753 : (2010) 4 SCC (Cri) 418] and *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675]]. Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution as also by the defence at that stage yet it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of



consideration of bail application. It is unfortunate that neither the law laid down by this Court, nor the material filed by the prosecution was taken note of by the High Court while considering the grant of bail to the respondents.

It may suffice to state that the co-accused persons, namely, Vinayak Singh and Sandeep Kumar, have also confessed that the flat where the victim girl was raped, was a rented flat of the co-accused person, namely, Kush and his presence at the time of kidnapping can also not be ruled out. In such view of the matter, this Court is of the view that the concept of parity alone is alien to the power of grant of bail and the case has to be seen in light of the attending facts and circumstances.

It is equally a well-settled law that grant of bail is not a mechanical act and no Judge is obliged to pass orders against his conscience merely to maintain consistency. It is equally a well-settled law that the court granting bail should exercise its discretion in a judicious manner and not as a



matter of course. It is also a well-settled law that grant of bail is the discretion of the court, but the discretion must be exercised, not in opposition to, but in accordance with the well established principles of law, hence, this Court is not, for a moment, impressed with the argument of the learned counsel for the petitioner that the petitioner should be granted bail on the ground of parity.

(Mohit Kumar Shah, J)

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