

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47039 of 2019

Arising Out of PS. Case No.-2 Year-2017 Thana- MAHILA PS District- Jehanabad

MD.SHOUKAT Son of Late Md. Mohiuddin Resident of village - Jahana,
P.O.- Dorma, P.s.- Annti, Jahana , dist.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar
		Mr.Sabal Kumar Jha
For the Opposite Party/s :		Mr.Brajendra Nath Pandey
For the Informant	:	Mr. Deepak Kumar

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

9 23-06-2020 The matter has been taken up through virtual Court proceeding.

Heard learned counsels for the petitioner, informant and learned counsel for the State.

The petitioner is languishing in jail since 27.4.2019 in a case registered for the offences punishable under Sections 376/34 of the IPC, 1860 and Section 4 of POCSO Act, 2012. However, on conclusion of investigation, final form was submitted but differing with the final form, learned Ist Additional Sessions Judge-cum-Special Judge, Jehanabad took cognizance under Sections 376(D)/34 of the IPC and Section 4 of the POCSO Act, 2012.

The prosecution case, as per the the written report of Reena Sinha submitted to the SHO, Kako Police Station, is to the effect



that the informant is a Physical teacher in Middle School, Kako. On 15.1.2017 at 2.05 P.M., the deaf and dumb daughter of the informant who used to stay in the school with the informant, but the teachers of the school, namely, Ataur Rahman, Abdul Bari, Md. Saukat (petitioner) and the Headmaster used to misbehave with the daughter of the informant but at the behest of the Headmaster, the issue was being suppressed. It is alleged that Ataur Rahman had illicit relationship with other teachers of the school. On the alleged date of occurrence, the daughter of the informant went traceless, whereafter the informant went on the roof top of the school and found that all the three FIR named accused persons including the petitioner have ravished her. The other girls also confirmed the occurrence and then the informant found bleeding injury on the private part and stain of blood on clothes of her daughter. It is also alleged that earlier also, the accused persons had molested the daughter of the informant.

It is submitted by learned counsel for the petitioner that since the informant never used to work in the school and for the same, complaints were made by the Headmaster of the school to Block Education Officer, Kako on 25.7.2016 and 29.9.2016, as the same has been brought on record as Annexure 9 series to the reply to the counter affidavit. The present FIR was registered on



15.1.2017. During medical examination, no external or internal injury was found on the body of the victim but the hymen was found ruptured. No spermatozoa was found on the body of the victim girl, hence no physical or pathological evidence of rape was found though on the basis of ruptured hymen, the possibility of rape was not ruled out. The victim was found aged between 13 to 14 years. The jeans pant and underwear of the victim girl were transmitted for their forensic examination. The FSL report suggests small blood area on the said clothes but no presence of semen was detected, hence neither injury report nor FSL report support the accusation of rape rather it negates the accusation of rape. On conclusion of investigation, final form has been submitted but differing with the final form, learned Ist Additional Sessions Judge-cum-Special Judge, Jehanabad took cognizance under Sections 376(D)/34 of the IPC, 1860 and Section 4 of the POCSO Act, 2012. It is further submitted that other similarly situated co-accused Abdul Barik alias S.M. Mazahrul Bari has been granted bail by a bench of this Court vide order dated 1.8.2019 passed in Cr. Misc. No.43554 of 2019, as contained in Annexure 5 whereas other co-accused Azzu Ahmad has been granted bail by a bench of this Court vide order dated 27.8.2019 passed in Cr. Misc. No.39877 of 2019.



Similarly, co-accused Ataur Rahman, Headmaster of the school, has been granted bail by a bench of this Court vide order dated 30.8.2019 passed in Cr. Misc. No.45144 of 2019.

Learned counsel for the informant submits that there is specific accusation against the petitioner in the FIR. The accusation is being supported by the informant in her statement under Section 164 of Cr.P.C. and since during investigation the other relevant materials were not considered, hence further investigation in exercise of jurisdiction under Section 173(8) of the Cr.P.C. was going on. Similar is the stand of learned counsel for the State.

Considering the fact that the accusation is completely negated not only by the medical report but also by the FSL report, the complaint by the Principal of the school against the informant were made at earlier point of time, on conclusion of investigation, the accusation has been found as mistake of fact, statement made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent, similarly situated co-accused being granted bail by a bench of this Court, coupled with the period in custody, let the petitioner above named be released on bail, for the present, provisionally for a period of three months on furnishing one surety to the satisfaction of the



learned Ist Additional Sessions Judge, Jehanabad in connection with Jehanabad Mahila P.S. Case No. 2 of 2017.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-Mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Ist Additional Sessions Judge, Jehanabad including one surety given at the time of provisional bail.

The learned Court below will be at liberty to further extend the period of provisional bail if the Court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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