

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.12913 of 2021**

Arising Out of PS. Case No.-103 Year-2020 Thana- CHAKIA District- East Champaran

Prabhat Kumar, Son of Late Ashok Singh, Resident of Village- Harisidhi
Babutola, P.S- Harisidhi, District- East Champaran

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Udbhav, Advocate
For the Opposite Party/s	:	Mr. Dr. Ajeet Kumar, A.P.P.
For the Informant	:	Mr. Rajesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 26-08-2021 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner, learned counsel for the informant and Mr. Dr. Ajeet Kumar, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Chakia P.S. Case No. 103 of 2020 registered for the offence punishable under Sections 363/366(A)/34 of the Indian Penal Code in which chargesheet has been submitted under Sections 363, 366(A), 376 and 120(B) of the Indian Penal Code and Section 4 of the POCSO Act. He is in custody since

05.06.2020.

As per the prosecution story disclosed in the First Information Report lodged by the mother of the victim, on 14.03.2020 at about 12.30 P.M. (afternoon) one of her co-villager Sanskriti Kashyap came to her residence and told her that the daughter of the informant is being called by the mother of Sanskriti Kashyap. On this, the informant believed her neighbour Sanskriti Kashyap and sent her daughter (victim) to the house of Nilu Devi, mother of said Sanskriti Kashyap. The informant claims that after sometimes she went to the house of Nilu Devi and found that the co-accused Ravi Prakash @ Laddu Singh, Sunny Kumar who is Nati of one Gorakh Chaudhary of village Pokhari and Radha Raman Dubey, son of Arun Dubey of village Koiragawan, P.S. - Chakia were present and they were trying to kidnap her daughter. The informant claims that she went to call her husband, in the meantime Nilu Devi locked her daughter in the kitchen room whereupon she started shouting. She also made a phone call to Police Station and saw that in a red colour car all the five named accused in the F.I.R. were fleeing away taking forcibly the daughter of the informant. She apprehended some wrong may be committed with her.

Learned counsel for the petitioner submits that the

informant claims herself an eye witness to the alleged occurrence in which her daughter was kidnapped by the named accused persons. This petitioner is not named in the First Information Report. He happens to be the Phuphera Bhai (cousin brother) of co-accused Ravi Prakash @ Laddu Singh. He was not found present in the house of Nilu Devi when the informant went there and he is not named as one who was also among the accused persons trying to take away the daughter of the informant.

Learned counsel further submits that the F.I.R. in this case was lodged on the subsequent day i.e. 15.03.2020 and in the nature of the offence alleged this one day delay may be held inordinate delay.

It is further submitted that the victim girl returned on 15.03.2020 itself and then she was not examined by the Police under Section 161 Cr.P.C. Her statement got recorded under Section 164 Cr.P.C. on 16.03.2020. In her statement, she gave altogether different narration. According to her, when she was returning from a shop, the co-accused Nilu Devi called her and she forcibly pulled her inside her house where Ravi Prakash @ Laddu Singh locked her and she was told not to go to her house. At this stage, she says that one Prabhat committed rape on her

and then she has not named co-accused Sunny Kumar and Radha Raman Dubey in her statement. According to the victim after committing rape she was left in a field and was threatened not to say anything to anybody. She remained there in the field and at about 2.30 in night she was taken to Chakia where the eldest daughter of Nilu Devi was present and she came with victim lady to her village.

Learned counsel submits that the entire prosecution story as contained in the F.I.R. is a complete variance with the statement of the victim girl and there is an attempt to implicate some one and to save some others.

Learned counsel further submits that it is difficult to understand that the victim girl was left in a field alone, there is no allegation that some body had kept her confined or was kept under some threat of injury, she was taken to Chakia at 2.30 A.M. during the night hour, in the meantime nobody saw her in the field either being taken away or while staying there.

Learned counsel further submits that in the case diary there is no witness saying that he had seen the victim girl with the accused persons and at the same time there is no witness saying that this petitioner was seen in the village of the informant that day.

Learned counsel submits that the medical examination report of the victim girl does not show any sign of rape or any kind of injury on her body.

It is also pointed out that after about two months from the date of statement of the victim under Section 164 Cr.P.C., the parents of the informant went to Police Station and disclosed the address of this petitioner which has come in paragraph '89' of the case diary. Learned counsel, however, submits that petitioner has no criminal antecedent.

On the other hand, Dr. Ajeet Kumar, learned A.P.P. for the State and Mr. Rajesh Kumar, learned counsel for the informant have opposed the prayer for regular bail of the petitioner. Their contention is that the victim girl is aged about 15 years and she has made her statement under Section 164 Cr.P.C. in which she has taken the name of the petitioner as a person who had committed rape on her.

Considering the facts and circumstances of the case, wherein this Court finds that there is an allegation of rape against the petitioner in the statement under Section 164 Cr.P.C. but the totality of the facts and circumstances as appearing from the materials placed before this Court show that the manner of occurrence as contained in the F.I.R. and the allegations made

by the mother of the victim materially differ with the statement of the victim under Section 164 Cr.P.C. While the mother says that she was kidnapped by five named accused persons in the F.I.R., the victim does not say so, the mother says that she had seen Ravi Prakash @ Laddu Singh, Sunny Kumar and Radha Raman Dubey in the house of Nilu Devi when she reached there, she does not say that there was any other unknown person, the victim does not name Sunny Kumar and Radha Raman Dubey being present there, the informant does not claim that this petitioner was present in the house, the victim claims that he had committed rape, the informant claims that Nilu Devi had confined the victim in her kitchen and the victim was shouting but at this stage the victim did not complain to her mother about the alleged rape, the victim claims that she was left in a field and from there at 2.30 P.M. she was taken to Chakiya by the co-accused from where she returned with the eldest daughter of Nilu Devi, the medical examination report does not suggest any commission of rape and there is no witness in the village saying that they had seen the victim girl being taken away either or that this petitioner was present in the village on that day, in the totality of the circumstances and the materials placed before this Court, at this stage, this Court

directs release of the petitioner above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, East Champaran, Motihari in connection with Chakia P.S. Case No. 103 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

And further condition that after release on bail, the petitioner shall not come in contact with the informant/victim and her family during trial and violation of this condition shall invite action towards cancellation of bail.

(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'.