

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16245 of 2021

Arising Out of PS. Case No.-18 Year-2020 Thana- EKCHARI District- Bhagalpur

KUNDAN YADAV @ KUNDAN KR. YADAV S/o Mantu Yadav R/o village-
Barichataiya, P.S.- Ekchari, District- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Jha, Adv.
For the Opposite Party/s : Mr.Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 27-09-2021 Heard learned counsel for the petitioner and Mr.
Akhileshwar Dayal, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Ekchari P.S. Case No.18/2020 registered for the offences punishable under Sections 341, 323, 376 and 506 of the Indian Penal Code and Section 4 of POCSO Act. He is in custody since 24.09.2020. Petitioner has otherwise no criminal antecedent.

As per the prosecution story, when the victim girl was going to her BASA from her home on 29.07.2020, on the point of a knife three named accused persons namely Aman Yadav, Ravi Roshan Yadav and Ankush Kumar Yadav took her to a field and forcibly committed rape on her. She alleged that the three named accused had been threatening her as she belongs to



scheduled caste.

Learned counsel for the petitioner submits that the alleged occurrence is said to have taken place on 29.07.2020, but the FIR has been lodged on 04.08.2020. In the FIR, the victim has categorically given the name of the three accused. The petitioner is not named in the FIR and no allegation whatsoever has been made against him.

Learned counsel further submits that the victim girl was examined by the investigating officer on 18.08.2020 and her statement is recorded in paragraph '78' of the case diary. On this day also the victim did not allege anything against this petitioner.

It is his further submission that it seems that the petitioner who is a co-villager and next-door neighbour of the victim has been falsely implicated subsequently by the victim in her statement under Section 164 Cr.P.C. Learned counsel submits that it is nothing but a case of false implication and this may be further noticed from the fact that neither in the FIR nor in her subsequent statement the victim had named this petitioner. The medical examination report is available in the case diary and it does not record any sign of any sexual assault. The medical board has specifically written that there is no



evidence of rape.

Mr. Akhileshwar Dayal, learned APP for the State has opposed the prayer for bail of the petitioner, but at the same time does not dispute that the FIR was lodged after about 7 days and in the FIR the petitioner is not named and even after lodging of the FIR after about 14 days when the statements of the victim were recorded by the I.O. she had not named this petitioner.

Considering the facts and circumstances of the case, in the nature of the submissions and the materials brought before this Court which have been taken note of hereinabove, showing that in the F.I.R. only three named accused had allegedly committed rape, petitioner is not named there and in the statement under Section 161 Cr.P.C., this Court directs that the petitioner above named be released 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 Exclusive Special Judge (POCSO)-cum-VIIth Additional District & Sessions Judge, Bhagalpur in connection with POCSO Case No.81/2020, arising out of Ekchari P.S. Case No.18/2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

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 violating the same shall invite action towards cancellation of bail.

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.

(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'.

