

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.17705 of 2021**

Arising Out of PS. Case No.-22 Year-2020 Thana- MAHILA P.S. District- Nawada

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MD.ASHFAQUE @ ASHFAQUE Son of Md. Ishaque Resident of Village -
Narhat, P.O and P.S.- Narhat, Distt.- Nawada.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Mishra, Adv.

For the Opposite Party/s : Mr.Rajesh Kumar, APP

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

4 24-09-2021 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 and Mr.
Rajesh Kumar, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in

connection with Mahila P.S. Case No.22/2020 registered for the

offences punishable under Sections 354(B), 376, 511, 504 and

506 of the Indian Penal Code and Section 8 of the POCSO Act.

He is in custody since 05.08.2020. The petitioner has got no

criminal history.

As per the prosecution story, the husband of the

informant is earning his livelihood by driving an auto. On

30.05.2020 the informant had sent her youngest daughter to the shop of the petitioner to bring sugar. She returned home and was weeping loudly. She disclosed that when she had gone to bring sugar in the shop situated near the Masjid, there was no other customer in the shop. It is alleged that the petitioner who is son of the shop owner had caught hold of her hand and took her inside the shop and caught her chest and was trying to forcibly undress her, the victim alleged that when she shouted, the dairy booth owner Manzur Alam and one more person came with him and got the victim free from the hand of the petitioner. On finding Manzur Alam and another person the victim is said to have assaulted the petitioner by her sleepers. It is alleged that in the night of 30.05.2021 she was threatened by Md. Shakil and Kasim @ Kaso that the informant should maintain silence and in case she would go to the police station then she will have to bear the dire consequences.

It is then alleged that on 16.06.2020 when the informant had gone outside to attend the Shradh of her father together with her husband, younger son and the eldest daughter and in her house only three daughters and the eldest son Md. Arman had remained, at about 7.00 pm the petitioner entered into her house and was trying to forcibly tease her daughter 'X'

which was objected to by her other daughters and they assaulted him by sleepers, whereafter the petitioner fled away. This fact was disclosed to the informant on 18.06.2020 when she reached her house with her husband. It is alleged that thereafter also the informant was threatened but she lodged the FIR on 19.06.2020.

Learned counsel for the petitioner submits that in course of investigation this has come that the informant was purchasing groceries/household goods from the shop of the petitioner on credit basis. The police has seized a register from the shop of the petitioner in which along with other names the name of the husband of the informant is also noted and there was an outstanding of Rs.9600/- against him which he was not paying. It is submitted that the next-door neighbours namely Satendra Kumar and some more have been examined by the I.O. and they have stated that it is a case of false implication of the petitioner. They had heard about some quarrel between the children but no such allegations were heard by them.

Learned counsel submits that the own uncle of the victim (Md. Ejaj) who is in the same house has been examined and has stated before the I.O. that he had not heard about any such alleged occurrence.

It is further stated that the medical board has not

found any injury on the body of the victim and even as per the FIR there is no allegation of commission of rape and so far as the allegations of sexual assault is concerned, those are false allegations and have been purposely made for the reason that the father of the petitioner and the petitioner were pursuing for payment of the outstanding dues.

Learned counsel points out that the alleged occurrence is said to have taken place on 30.05.2020 but no FIR was lodged. The second occurrence had allegedly taken place on 16.06.2020 but even this occurrence was not reported to the informant or her husband or to the neighbours by the daughters of the informant immediately after the occurrence on 16.06.2020 or on the subsequent day on 17.06.2020, though these days the people are connected over mobile with each other and this raises a grave doubt on the prosecution story. In the circumstances, it is submitted that the delay in lodging of the FIR and the kind of the materials present coupled with the fact that the FIR has been written by a Katib (a deed writer) namely Dr. Budhsen shows that the case has been concocted.

Learned APP for the State has gone through the case diary. He has categorically stated that in the case diary there are two kinds of depositions. There are witnesses who have stated

that the alleged occurrence were not heard and the petitioner has been falsely implicated. Learned APP has also submitted that there is an allegation of sexual assault but medical examination report does not disclose any injury on the body of the daughter of the informant and on both the occasions the informant herself alleges that the petitioner was beaten by the daughter/daughters of the informant.

Having regard to the facts and circumstances of the case, the huge delay in filing of the FIR and the kind of materials coming in the case diary and the one version of the witness including the statement of the own uncle of the victim is saying that the allegation is concocted and baseless and further that the FIR has been written by a person who is an expert in writing deeds (Katib) and some natural links like no reporting of the alleged occurrence of 16.06.2020 by the daughters of the informant to the informant either on 16.06.2020 or on the subsequent day in the present days when people are connected with each other so easily and the circumstances in form of the register seized by the police showing that there were outstanding against the family of the informant, considering these aspects of the matter and that the petitioner is in custody for over one year, this Court is persuaded to direct 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 Additional District and Sessions Judge-VI-cum-Special Judge, POCSO Act, Nawada in connection with Mahila P.S. Case No.22/2020, 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'.