

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18583 of 2021**

Arising Out of PS. Case No.-6 Year-2020 Thana- MAHILA PS District- Gaya

MUNNA YADAV @ MUNNA KUMAR Son of Mathura Yadav Resident of
Village- Kandi, P.S.- Chandauti, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Manish Kumar No.2, Adv.
For the Opposite Party/s	:	Mr.Tarun Prasad Mandal, APP
For the Informant	:	Mr. Satyaveer, Adv.

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

3 06-10-2021 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 learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Mahila (Gaya) P.S. Case No.06 of 2020 registered for the offences punishable under Section 376(D) of the Indian Penal Code. He is in custody since 10.10.2020. The petitioner has got no criminal antecedent.

As per the prosecution story, the victim lady who is admittedly major was called over telephone by one Ram Babu Yadav (co-accused), she reached on his telephonic call and from



Manpur she went along with him on his motorcycle. It is alleged that she left her house on 14.06.2020 at 6.00 pm and then Ram Babu Yadav took her here and there and then on 15.06.2020 (1.00 am) he took her to village Kandi Nawada school on Gaya-Patna Road where he called his friends including this petitioner and they committed rape on her.

Learned counsel for the petitioner submits that in the nature of the allegations made against the petitioner, one of the considerations for purpose of grant of bail as enunciated by the Hon'ble Supreme Court in the case of **Ram Govind Upadhyay Vs. Sudarshan Singh** reported in **(2002) 3 SCC 598** would be as to whether the Court has been given to understand some doubts over the genuineness of the prosecution case.

This judgment has been referred to and relied upon by the Hon'ble Supreme Court in the latest judgment of **Shri Mahadev Meena Vs. Raveen Rathore and Another** passed in **Cr.Appeal No.1089 of 2021** decided on 27th September, 2021.

Learned counsel submits that in this case there are ample materials from which the petitioner would claim that the genuineness of the prosecution case is highly doubtful.

In order to buttress his point, learned counsel points out that in course of investigation it has come that this victim



lady had married one Rohit Sao about three years ago but because of her estranged matrimonial relationship her husband had left her. The victim lady has come in touch with one Ram Babu Yadav through her sister who is running a shop and Ram Babu Yadav used to visit the shop of the sister of the victim.

In course of investigation it has further come that the victim lady developed friendship with the said Ram Babu Yadav and Ram Babu Yadav was in regular telephonic and whatsapp chat with the victim.

Learned counsel further submits that as per the allegations on 14.06.2020 the victim had left her house at 6.00 pm and went with said Ram Babu Yadav and thereafter the said Ram Babu Yadav and the other co-accused had committed rape on her on 15.06.2020 (1.00 AM) but in course of investigation it has come that after the alleged rape the victim was returning on the motorcycle with Ram Babu Yadav and she was intercepted by police party on way. The police party is said to have asked the victim as to why they are moving on the road at this hour whereupon the victim told the police party that she had not committed any wrong act whereafter the police party told them to go ahead. It was the period when there were complete lock-down and movement of vehicles without e-pass was not



allowed.

Learned counsel submits that the restatement of the victim recorded in paragraph '2' of the case diary goes a long way to show that the victim admits that she was in company of the co-accused Ram Babu Yadav even after the alleged act and then at the very first instance when she came across the police party of Buniyadganj police station, on asking by the police party she pretended that everything was fine and she had not committed any wrong whereafter the police party allowed them to proceed ahead. This is one thing which would raise a grave doubt on the subsequent version of the victim-informant who on the next day lodged the FIR making these allegation.

Learned counsel further points out that in paragraph '6' of the case diary though the I.O. has stated that he went to the place of occurrence where he found the empty bottle of sprite and other things but nothing has been seized by the I.O. and there is no material at all by way of any scientific investigation to connect the petitioner's presence at the place of occurrence.

Learned counsel further submits that in paragraph '8' of the case diary it has come that one Manju Devi is running a shop in her house near the place of alleged occurrence and on



15.06.2020 the co-accused Ram Babu Yadav had gone to her shop to purchase one sprite bottle and one water bottle as also a packet of mixture saying that he will give the money on the next day, she has stated that Ram Babu Yadav was regularly coming to her shop during the night hours and he was making purchases. This witness has not seen the petitioner at the place of occurrence.

Learned counsel further submits that another witness Rajesh Prasad who is a neighbour has also not seen the petitioner at the place of occurrence.

It is further submitted that apart from the aforementioned materials, one more thing is on the record and that is the medical examination report of the victim. The medical examination report says no sign of recent sexual act could be found though it vaguely records that the rape cannot be denied. Learned counsel submits that it is highly improbable and beyond imagination that in a case where the rape would be committed by four persons and the medical examination takes place within twenty-four hours of the alleged occurrence no sign of sexual intercourse would be found. The clothes of the informant were not seized and there is no scientific investigation on this. It is also pointed out that in course of evidence the



statement of the mother and sister of the victim have also been recorded and they have stated that the husband of the victim had left her and the sister had told the mother that the victim was talking to some one secretly.

The submission is that the only material in form of bald allegation of the informant is not inspiring confidence.

Learned counsel for the informant as well as learned APP for the State have opposed the prayer for bail of the petitioner. Their common contention is that the victim had made allegation and she had supported her allegation in her statement under Section 164 Cr.P.C. On going through paragraph '2' of the case diary, learned APP for the State does not dispute that in course of investigation it has come that after the alleged commission of rape the victim had been moving on the motorcycle with the co-accused Ram Babu Yadav and when they were intercepted by Buniyadganj police station, the victim told the police party that they had not committed any wrong and thereafter they were allowed to proceed further.

Learned APP does not dispute that the I.O. has not seized any material from the place of occurrence and at least the case diary does not show such seizure. Further there is no other material which may point out the presence of the petitioner at



the place of occurrence.

Considering the facts and circumstances of the case, though the allegations in the First Information Report are serious in nature but the kind of materials which have been placed before this Court in form of the further statement of the victim recorded in paragraph '2' of the case diary which has been noticed hereinabove coupled with that the medical examination report not suggesting any recent sexual intercourse and then the statement of the shop owner and the neighbour not saying that the petitioner was seen near the place of occurrence, there being no other scientific investigation, in the totality of the circumstances, in the opinion of this Court, for purpose of regular bail, at this stage learned counsel for the petitioner has to a substantial extent cast doubt on the credibility of the prosecution story.

In the case of **Ram Govind Upadhyay** (supra), the Hon'ble Supreme Court has, inter-alia observed that one of the considerations which would govern the grant of bail would be as under:-

“4. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the



genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

For the reasons stated above, this Court is persuaded to enlarge the petitioner on bail.

Let 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 Miss Priti Kumari, learned Judicial Magistrate-1st Class, Gaya in connection with Mahila (Gaya) P.S. Case No.06 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 violating the same shall invite action towards cancellation of bail.



The discussions and observations whatsoever made in
this order are for purpose of consideration of the prayer for 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'.

