

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33118 of 2021**

Arising Out of PS. Case No.-15 Year-2016 Thana- MAHILA P.S. District- Nalanda

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VISHNU KUMAR @ VISHNU YADAV @ BISHNU KUMAR SON OF
LATE LATAN PRASAD R/O VILLAGE- MAHARAJGANJ, P.S.-
GOVINDPUR, DISTRICT- NAWADA (BIHAR).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Aaruni Singh

For the Opposite Party/s : Mr.Ajay Kumar Jha

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER**

5 06-12-2021 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner seeks bail in connection Mahila P.S. Case no.
15 of 2016 registered for the offence punishable under sections
376, 420/34, 366A, 370, 370A, 212, 120B of the Indian Penal
Code and sections 4, 6, 8 of Protection of Children from Sexual
Offences Act, 2012 read with sections 4, 5 and 6 of the Immoral
Traffic (Prevention) Act.

Learned counsel for the petitioner submits that
petitioner is in custody since 19.03.2018 and is person with
clean antecedent and charge sheet has been submitted. Learned
counsel for the petitioner further submits that from bare perusal
of the allegation as alleged in the FIR, it would manifest that



the informant (X) minor aged about 15 years alleges that she was acquainted with Sulekha Devi and on 6.2.2016 Sulekha Devi asked the informant to accompany her for a birthday party, the informant after seeking permission from her elder sister accompanied Sulekha Devi for attending the birthday party and left for Bharao Chowk. It is next alleged that Sulekha Devi on way informed the informant that she will take her mother also from Bakhtiyarpur and then they would go to the party, it is next alleged that at Bakhtiyarpur one Bolero vehicle was parked on which all boarded including the mother of Sulekha Devi and the vehicle took them to Giriyak in between 11 to 11:30 p.m. and left them in a four storied house, the name of which informant could not read as it was night. Further, it is alleged that Sulekha Devi informed the informant that a sir will come who will ask question and she has to reply on which the informant protested and said that they were to go to a birthday party and it is next alleged that a man aged in between 40-50 years came and started drinking with Sulekha Devi and 4/5 persons were guarding the gate, it is next alleged that thereafter Sulekha Devi stripped the informant and thereafter the drunk person raped her, further it is alleged that informant was dropped at her house next morning where she disclosed the incident to her elder sister



who in its turn informed their father and thereafter FIR came to be instituted against Sulekha Devi, one unidentified accused aged in between 40 to 50 years and 4/5 unknown persons. The informant has further stated in FIR that she could identify the accused on seeing them.

Learned counsel submits that petitioner is not named in the FIR, learned counsel further submits that even in the restatement of the victim recorded on 9.2.2016 and 20.2.2016 victim has not even whispered anything which could even remotely suggest about involvement of the petitioner in the occurrence. It is further submitted that one Sandeep Suman was arrested during course of investigation and against whom during investigation at para 99 of the case diary it has been recorded that he was the person instrumental in transporting the victim to the place of occurrence on Bolero vehicle, the learned counsel submits that bail application of the said Sandeep Suman @ Puspanjay was rejected vide order dated 20.8.2016 in Cr. Misc. no. 32604/2016 on the ground that as it was he who had brought the victim to the place of occurrence on Bolero vehicle. Learned counsel for the petitioner submits that confessional statements of Sulekha Devi, Radha Devi (mother of the Sulekha Devi), Chhoti @ Amrita and Tussi Devi were recorded at para 177 of



the case diary, Radha Devi at para 182 of the case diary and Chhoti @ Amrita at para 183 of the case diary.

Learned counsel submits that from perusal of the confessional statements of aforesaid three accused, it would manifest that they have not named this petitioner, learned counsel further submits that Radha Devi (mother of Sulekha Devi) in her confessional statement has stated that Vishnu (petitioner) was driver of the Bolero vehicle, learned counsel further submits that statement of the bodyguards of the main accused were recorded at paras 218, 219, 220 and 221 of the case diary and bodyguards have stated that the petitioner was the driver of the main accused along with two other drivers. Learned counsel submits that even victim in her statement under section 164 Cr.P.C though has stated there were 4/5 unknown persons but has not even remotely suggested about this petitioner against whom it is being alleged that he carried the victim from Bhaktiyarpur to the place of occurrence. Learned counsel further submits that during course of investigation as aforesaid, it has come that it was Sandeep who had provided the vehicle and had carried the minor to the place of occurrence based on which his bail application came to be rejected. Learned counsel submits that during course of investigation, charge sheet



was submitted on 20.4.2016 against six accused persons excluding the petitioner keeping the investigation open against the petitioner and two other named accused and 4/5 unknown. Learned counsel submits that on 2.4. 2016 Investigating officer filed an application seeking warrant of arrest against the petitioner based on materials collected during investigation as recorded in paras 121, 181, 218, 219, 220 of the case diary. It is submitted that the learned court below rejected the application observing that there is not enough circumstantial evidence against the accused establishing his presence and participation in the occurrence. Learned counsel submits that again the Investigating officer on 20.4.2016 filed an application seeking warrant of arrest against the petitioner, but again, the learned court below taking note of the earlier order again rejected the application recording that even the materials collected at paras 221, 218, 219 of the case diary also does not establish presence and participation of the petitioner in the occurrence. Learned counsel submits that when the learned court below rejected the application of the Investigating officer seeking warrant of arrest against the petitioner, it was thereafter that the Investigating officer arrested the petitioner on 19.3.2018 and cognizance came to be taken by order dated 19.4.2019.



Learned counsel submits that the petitioner was not named in the FIR nor during course of investigation either the informant or co-accused Sulekha Devi and others named this petitioner and it was Sandeep who was arrested on the ground that he was instrumental in transporting the vehicle from Bhaktiyarpur to the place of occurrence but since this petitioner was driver of the main accused as such came to be implicated merely because during course of investigation it has come that he had talked with main accused and co-accused Tussi Devi. Learned counsel further submits that it was Radha Devi who named this petitioner in her confessional statement when other accused did not even remotely suggest about the presence of the petitioner at the place of occurrence. Further, the learned court below while rejecting the application filed by the Investigating officer seeking warrant of arrest also clearly recorded that the presence and participation of the petitioner in the occurrence based on investigation does not justify issuance of warrant of arrest and thus, application came to be rejected.

Learned APP opposes the bail application and submits that bodyguards and Radha Devi have stated about this petitioner in their statements recorded during course of investigation. Learned APP further submits that petitioner is



driver of the main accused and he had talked as aforesaid and based on mobile location it has been investigated that he was also present at the place of occurrence.

At this stage, learned counsel for the petitioner submits that informant has very clearly stated in FIR that she could identify the accused persons after seeing them but petitioner despite being in jail custody since 19.3.2018 was not put on TI parade.

The learned counsel for the petitioner thus submits that it does not stand to reason, as to why the petitioner was not put on TI parade and charge sheet came to be submitted when the informant in the FIR had very clearly stated that she can identify the accused persons who were present at the place of occurrence, the learned counsel submits that this act of Investigating officer in not putting the petitioner on TI parade amply demonstrates that the Investigating officer was sanguine that the informant will not identify the petitioner, as he was innocent, nor he had driven the victim to the place of occurrence and was implicated merely because he had talked with the main accused and Tussi Devi as it is being alleged during the course of investigation.

Learned counsel for the petitioner further submits that



altogether there are 27 prosecution witnesses out of which only five witnesses have been examined till date.

The learned counsel further submits that petitioner has remained in custody for more than 03 years and if the bail is not considered and the petitioner is acquitted after trial how his period of incarceration would be compensated and in the event the petitioner is indicted in trial, he will serve the sentence.

Learned APP after going through the case diary fairly submits that petitioner has not even been put on TI parade till date.

Considering the facts that petitioner is in jail custody and is person with clean antecedent and charge sheet has been submitted and till date he has not been put on TI parade and twice applications seeking warrant of arrest were rejected by the learned court below, the petitioner is directed to be released on bail on furnishing bail bonds of Rs 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the Addl. Sessions Judge VI-cum- Special Judge, Nalanda at Biharsarif in Special case no. 01/2019/ Tr. no. 02/2019 arising out of Mahila P.S. Case no. 15 of 2016 with condition that in the event petitioner on two consecutive dates does not appear in trial without any plausible explanation, the



court below will be at liberty to cancel the bail bond of the
petitioner.

(Satyavrat Verma, J)

s.hassan/-

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