

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.23459 of 2020**

Arising Out of PS. Case No.-94 Year-2019 Thana- MEDNI CHAUKI District- Lakhisarai

SANTOSH KUMAR @ SOLZAR KUMAR, Son of Arun Mahto @ Arun Kumar @ Harkhit Mahto, Resident of Village - Banshipur Chaian Tola (Basgarha) Mednichowki, P.S. - Mednichowki, District - Lakhsarai.

... .. Petitioner

Versus

1. The State of Bihar
2. Sita Kumari (imaginary name), D/o Ram Mahto (Imaginary name), Resident of Village - Banshipur, Basgarha Mednichowki, P.S. - Mednichowki, District - Lakhsarai.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar, Advocate
For the Opposite Party/s	:	Mr.Uma Shankar Prasad Singh, A.P.P.
For the Informant-O.P.No.2	:	Mr. Arvind Kumar Singh, Advocate

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

7 10-08-2021 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-opposite party no.2 and Mr. Uma Shankar Prasad Singh, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Mednichowki P.S. Case No. 94 of 2019 registered for the offence punishable under Section 376 of the Indian Penal Code and Section 3 & 4 of the POCSO Act, 2012.

On 05.07.2021, after hearing learned counsel for the

petitioner and learned A.P.P. for the State, this Court passed the following order:-

“Learned counsel for the petitioner submits that in this case although allegation has been made that the petitioner had raped the victim girl but from the narrations given in the F.I.R. it would appear that this victim girl never disclosed about this alleged occurrence for about two months thereafter when she became pregnant, on the advice of the petitioner she took pills for abortion and she admitted to have gone for abortion. Thereafter she claims that a panchayati had taken place in which her hands were given to the petitioner and she lived in the house of the petitioner for about 35-40 days, thereafter because of the alleged torture she left his house on her own on 03.11.2019. Thereafter the present case has been lodged.

Learned counsel for the petitioner submits that the Medical Board has found the age of the victim girl between 19- 20 years and in the nature of the allegations, it cannot be alleged that the petitioner has established any forcible relationship with the victim girl.

Learned A.P.P. for the State submits that in the fact of the present case it would be just and proper to notice the victim girl.

In the circumstances let the informant be added as O.P. No. 2. Notice be issued to opposite party no. 2 by both modes ordinary process as well as registered cover with A/D, for which requisites etc. must be filed within two weeks.

Let a report be also called for from the court of learned A.D.J.-I-cum-Special Judge, Lakhisarai as to the present stage of trial of the Mednichowki P.S.

Case No. 94 of 2019 and the time likely to be taken in conclusion thereof.

List this case after service of notice on opposite party no. 2 with the report or on 9th August, 2021, whichever is earlier.”

Today, Mr. Arvind Kumar Singh, learned counsel for opposite party no. 2 has entered appearance and informed this Court that the opposite party no. 2 is already married to somebody else and she is living in her Sasural. Learned counsel submits that the charge has been framed against the petitioner and hence now the opposite party no. 2 shall participate in course of trial.

Mr. Uma Shankar Prasad Singh, learned A.P.P. for the State has opposed the prayer for regular bail of the petitioner, however, considering the facts and circumstances of the case wherein this Court has noticed that there is no dispute as to the age of victim girl assessed between 19-20 years, there is a delay of about four months in lodging of the present F.I.R. alleging commission of rape against the petitioner and further the developments which took place in which both the petitioner and the opposite party no. 2 lived together for about 35-40 days in the house of the petitioner and it was the opposite party no. 2 who left the house of the petitioner on her own on 03.11.2019 and 11 days thereafter present F.I.R. was lodged, the petitioner

has remained in jail in connection with this case since 21.12.2019, though the charge has been framed but as per the trial court's report 11 witnesses on behalf of the prosecution are to be examined and the evidence has still not begun, considering that in the present day's pandemic situation when the court is not functioning physically and the conclusion of trial is not likely to take place in near future, in the totality of the facts and circumstances of the case, 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 A.D.J.1st -cum-Special Judge, Lakhisarai in connection with Mednichowki P.S. Case No. 94 of 2019, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from

disclosing such facts to the Court or to any police officer or tamper with the evidence.

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)

vats/-

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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'.