

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30500 of 2020**

Arising Out of PS. Case No.-65 Year-2019 Thana- MAHILA P.S BAGHA District- West
Champaran

Najbullah Mian @ Najbullah Alam S/o Ramjan Mian Resident of Village-
Jharmahui, P.S-Chautarwa, District-West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma,Advocate

For the Opposite Party/s : Mr.Akhileshwar Dayal,APP

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

4 22-01-2021 Heard learned counsel for the petitioner and Mr. Akhileshwar
Dayal, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Bagaha Mahila P.S. Case No. 65 of 2019 registered for the offences punishable under Sections 341, 323, 376/34 of the Indian Penal Code and 4, 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

Learned counsel for the petitioner submits that it is a case in which out an out a false allegation has been made against the petitioner. It is submitted that in fact negotiation for marriage between the petitioner and the the victim girl was going on, but had failed and it is because of the failure of the negotiation the present case has been lodged against the petitioner.

Learned counsel submits that as per allegations in the FIR on 29.11.2019 at about 08:00 P.M. the victim girl was alone in her house while her parents and the brother-in-law had gone to attend a 'Bhoj' at the house of one Hridya Sah who is a co-villager.



It is submitted that the victim girl alleged that in absence of her parents and nobody else in the family this petitioner entered in her house, tied her hands and legs and then committed rape on her.

It is further submitted that in course of investigation, police has not examined Hridya Sah, therefore, the very correctness of the statement of the victim girl that her parents had gone to attend the bhoj at the house of Hridya Sah has not been verified.

It is then submitted that the alleged occurrence had taken place on 29.11.2019 but the FIR has been lodged on 02.12.2019 and the victim girl was sent for medical examination on the same day. The medical examination report nowhere shows any sign of injury on her body either externally or internally. The medical examination report further says that on physical examination of the victim girl no recent sign of sexual assault could be noticed.

Learned counsel submits that there are some independent witnesses who have been examined in course of investigation and their statements may be found in paragraph '73' and '74' of the case diary wherein they have stated that there was a talk of marriage between the petitioner and the victim girl which had failed.

It is lastly submitted that when the I.O. reached to the place of occurrence, no rope or the clothes of the victim girl were presented before the I.O. The witnesses have not seen any mark of tying by rope on the body of the victim girl. It is then stated that the petitioner is in custody since 10.02.2020, investigation against him is complete and he being a young boy needs to pursue his study and career for future,



therefore, his prayer for release may be considered in the given facts and circumstances of the case.

Mr. Akhileshwar Dayal, learned APP for the State has submitted that Hridya Shah has not been investigated by I.O. and it is a fact that the I.O. has not been provided with any cloth of the victim girl or the rope allegedly used in tying of the victim girl. He has further informed to this Court that in the case diary there is no indication as to why the FIR has been lodged with a delay of three days.

Having regard to the facts and circumstances of the case, the kind of materials pointed out to this Court by learned counsel for the petitioner and then from the case diary by the learned APP for the State as noticed above, the medical examination report not showing any sign of sexual intercourse or any bodily injury on the person of the victim girl, in course of investigation witnesses have stated about a failed negotiation of marriage between the petitioner and the victim girl and the petitioner has remained in jail for about 11 months, investigation against him is complete and there is no submission on behalf of the State that release of the petitioner at this stage is likely to result in tampering with the evidence or interfering in the course of trial, let the petitioner above named be released on bail on furnishing of bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, West Champaran, Bettiah in connection with Bagaha Mahila P.S. Case No. 65 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 he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic.

The application is allowed.

(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'.

