

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.8775 of 2021**

Arising Out of PS. Case No.-133 Year-2020 Thana- BIRPUR District- Supaul

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NISHAR AHMAD Son of Serajuddin Resident of Village- Lalpur Goth, Ward
No. 13, P.S.- Birpur, District- Supaul.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun, Advocate

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

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

4 06-08-2021 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with POCSO Case No.31/2020, arising out of Birpur P.S. Case No.133/2020, registered for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

Learned counsel for the petitioner submits that as per the prosecution story when the informant had gone to the house of one Fazlur Rahman on 23.06.2020 at 7.00 pm and she came out of her house, this petitioner came there and took her to the ‘Bhushi Ghar’ and started committing rape on her. After committing rape, the petitioner told her not to cry and not to tell

this to anyone. He also promised to marry the informant. It is alleged that the people came to know from her cry and reached there but before that the petitioner had fled away. The informant further alleged that after committing rape the petitioner has refused to marry her, therefore, the present case has been lodged.

Learned counsel for the petitioner submits that the present F.I.R. has been lodged after about six days of the alleged occurrence. In course of her medical examination the victim girl has been found between 17-19 years of age.

It is further submitted that in her Section 161 Cr.P.C. and 164 Cr.P.C. statements the victim girl has stated that she was having a love affair with this petitioner for about one year and the family members of both the parties had discussed about the marriage but later on the family of the petitioner refused to marry the petitioner with the victim girl.

Learned counsel submits that the medical examination of the victim girl took place on 30.06.2020, all the members of the Medical Board came to a conclusion that there were no fighting sign or any sign of rape on the victim girl. They recorded the age of the victim between 17-19 years.

It is further submitted that in course of investigation no witness has turned up to say that this petitioner was seen near the place of occurrence or was fleeing away from the said place on the alleged date of occurrence. Fajlur Rahman who has been examined by the I.O. and whose Bhushi Ghar has been set up as the place of occurrence seems to be related with the victim girl because the victim girl in her statement under Section 161 Cr.P.C. had disclosed that she had gone to the house of her Bua where this occurrence took place. Neither the Bua of the victim girl nor Fazlur Rahman had seen this petitioner in their house and there is no explanation as to why Fazlur Rahman, if came to know about the alleged occurrence did not lodge the F.I.R. The submission is that it is a case of false implication of the petitioner who is a young boy only because the family of the petitioner did not agree to marry the victim girl.

Mr. Ajay Kumar Jha, learned A.P.P. for the State has opposed the prayer for bail of the petitioner. Learned A.P.P. has read out the statements made in Section 161 Cr.P.C. and 164 Cr.P.C. and in both the statements the victim girl has stated about her love affair with the petitioner for last one year. On query made by this Court as to whether any co-villager has come forward in course of investigation to say that the petitioner

was seen near the place of occurrence or was seen fleeing away from the place of occurrence, learned A.P.P. has informed that there is no such witness on this point. About Fazlur Rahman also this Court has been informed by learned A.P.P. that though he claims to have come to know about this occurrence from the victim girl on the same date but he had not reported it to the police and had not himself seen this petitioner near his house and the place of occurrence. The medical examination report as stated above is not disputed.

Considering the facts and circumstances of the case, the materials which have been noticed above in form of the age of the victim lady, her statement about love affair with the petitioner, the delay in lodging of the F.I.R., the medical examination report not suggesting any sign of rape and the immediate cause of lodgment of the case being denial of the petitioner's family to marry the petitioner with the victim girl and then there being no statement at all of any independent witness or Fazlur Rahman saying that this petitioner was seen near the place of occurrence on the alleged date of occurrence, in the totality of the circumstances this Court having noticed that the petitioner has already remained in jail for more than one year, investigation against him is complete but the trial is not

likely to take place in near future, directs release of the petitioner above named 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 Additional District and Sessions Judge-I-cum-Special Judge, Suapul in connection with POCSO-31/2020, arising out of Birpur P.S. Case No.133/2020, 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.

(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'.