

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37182 of 2020

Arising Out of PS. Case No.-151 Year-2019 Thana- KHANPURA District- Samastipur

Afroj Ansari, aged about 31 years, male, son of Suleman Ansari, resident of
Village- Siropatti, P.S.- Khanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Hussamuddin Azad, Advocate
For the State : Mr. Binod Kumar No. 2, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Md. Hussamuddin Azad, learned counsel for the petitioner and Mr. Binod Kumar No. 2, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Khanpur PS Case No. 151 of 2019 dated 07.11.2019, instituted under Sections 323, 376, 504 of the Indian Penal Code.

4. The allegation against the petitioner is that the informant, who had initially filed a complaint case, were neighbours and on 14.09.2019 at 8.00 PM, the petitioner had come to the house of the informant and asked her to accompany him to his house as his mother was ill, but she refused and thereafter the



petitioner is said to have taken permission from the mother of the complainant, who allowed her to go. Thereafter, it is alleged that the petitioner on way took her to an orchard and forcibly committed rape and due to cry raised by the informant, passersby came and the petitioner had fled away and she had returned to her house. The complaint having been sent to police has resulted in institution of FIR.

5. Learned counsel for the petitioner submitted that the allegation is false as no such incident occurred. It was submitted that though there is some explanation for the delay as the incident is said to have taken place on 14.09.2019, whereas, the complaint was filed on 14.10.2019, but such explanation is totally unbelievable. Learned counsel submitted that he earns his livelihood at Kolkata and has been falsely implicated. It was contended that 8'o clock at night, the allegation that the petitioner had come to the house of the informant is itself unbelievable, but even if it is accepted for the sake of argument that the petitioner had come to the house of the informant, then it is not possible that at such late hour in the village, there would be movement of people and when the informant would raise cry, they would come. Learned counsel submitted that it is also unbelievable that while the informant was being subjected to rape, she did not raise any



cry and only when the act was completed, she raised cry and then the petitioner ran away. Learned counsel submitted that due to ulterior motive the present case has been filed. It was further submitted that the allegation that the informant first went to the police, who did not do anything and then she complained to the Superintendent of Police, Samastipur, who also did not do anything and only asked her to go back to the police station, but no action was taken, is unbelievable as in such matters where a girl is alleging rape, the entire police becomes overactive and it cannot be accepted that the Superintendent of Police, Samastipur, would be so casual in such matters. Learned counsel submitted that the petitioner has no other criminal antecedent. He submitted that the false case has been filed as the petitioner's family is on inimical terms with one Nabi Alam Hussain, who is also a witness, named in the complaint/FIR.

6. In view of the aforesaid, the Court had called for a report from the Superintendent of Police, Samastipur on 09.07.2021 along with the legible photocopy of the entire case diary. As per the direction to the Superintendent of Police, Samastipur with regard to a specific report on the allegation made in the complaint/FIR that the local police, including him, did not respond to the plea of the informant with regard to lodging a case



in the matter despite there being allegation of rape of the informant as also the detailed location of the place of occurrence, he has submitted the same under letter dated 21.07.2021.

7. Learned APP submitted that he has received copy of the case diary. It was submitted that the communication of the Superintendent of Police, Samastipur discloses that upon verification, there has been no trace of any complaint made by the complainant, either at the local police station or to the Superintendent of Police, Samastipur from 14.09.2019 to 14.10.2019, which are the dates on which the alleged occurrence is said to have taken place and the date on which the complaint was filed. Further, description of the place of occurrence has also been mentioned.

8. Learned APP submitted that many independent witnesses have stated that the on the said date there was *Milad* going on and the petitioner had committed the offence and on cry raised by the complainant, they had gone there and the petitioner had run away and she had narrated the entire sequence of events. It was submitted that the girl in her statement before the police has also stated that her mother along with villagers had come to the place of occurrence and the petitioner had fled away after committing the offence. Learned counsel submitted that the



Medical Board after examining the victim has opined that she is aged between 15-16 years. However, as the medical examination was held on 14.11.2019, i.e., after two months of the occurrence, obviously no sign of any injury has been found and, in the opinion, it has been stated that whether sexual assault has been done cannot be confirmed. It was submitted that obviously, after two months, it is not possible to give a finding as to what happened two months earlier, especially in a case of alleged rape. Learned APP submitted that the striking feature of the case is that absolutely no acceptable or believable reason for any false implication has been mentioned, especially when the parties are neighbours. It was submitted that the explanation is that a false case has been filed as the petitioner's family is on inimical terms with Nabi Alam Hussain, who is also a witness, is not fit to be believed for the reason that no girl would be party to an allegation that she has been raped only because of enmity of someone else as the said witness is not alleged to be closely related to the complainant and with regard to the stand that the petitioner lives in Kolkata, it has also not come during investigation. It was submitted that even the nature of the so-called enmity with Nabi Alam Hussain has not been mentioned in the entire complaint/FIR.



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the allegations made in the complaint/FIR cannot be brushed aside to be false mainly because no substantial motive has been shown for false implication and also during investigation, many independent witnesses have supported the prosecution case as also the fact that in such cases, the family and the victims are very reluctant to move the authorities as it involves their social prestige.

10. For reasons aforesaid, the Court is not inclined to grant pre-arrest bail to the petitioner.

11. Accordingly, the petition stands dismissed.

12. Interim protection granted to the petitioner under order dated 09.07.2021 stands vacated.

(Ahsanuddin Amanullah, J)

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