

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)  
CRIMINAL MISCELLANEOUS No.2166 of 2021**

Arising Out of PS. Case No.-265 Year-2019 Thana- BARHARA KOTHI District- Purnia

=====

TUNTUN SHARMA @ TUNTUN KUMAR Son of Pathal Sharma Resident  
of Village-Belapemu Dargah Tola, P.S.-Barhara (Raghubansh Nagar) District-  
Purnea

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

=====

**Appearance :**

For the Petitioner/s : Mr. Bhola Prasad, Advocate

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

=====

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

4      16-04-2021              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, Mr.  
Akhileshwar Dayal, learned A.P.P. for the State and Mr.  
Chandrashekhar Prasad, the Investigating Officer of this case.

Pursuant to the last order, the case diary, medical  
examination report and the F.S.L. report have been produced by  
the I.O. and the same has been gone through by Mr.  
Akhileshwar Dayal, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in  
connection with Barhara (Raghubansh Nagar) P.S. Case No. 265  
of 2019 registered for the offences punishable under Sections



341, 323, 504, 506, 376, 427 and 379/34 of the Indian Penal Code.

As per the F.I.R. lodged on 22.12.2019, in the night of 19.12.2019, the informant had gone to the house of one Phool Chandra Thakur to participate in a feast. The father-in-law of the informant asked the daughter of the informant to bring cow dung cake. It is alleged that while she had gone to bring cow dung cake from her house, on way the co-accused and this petitioner overpowered her. It is alleged that the co-accused had put a cloth in her mouth and this petitioner committed rape upon her. As per prosecution story, the victim shouted whereupon the informant and her gotni went there to see the victim and on finding them the accused started fleeing away. The petitioner was apprehended and was assaulted. Thereafter, the matter was informed to the family of the petitioner but they threatened that if they inform the police then she will be killed.

Informant has stated that earlier she had made an application before the police on 20.12.2019 in which she had alleged only about teasing but on 21.12.2019, her daughter disclosed about the rape with her whereafter she again informed the police.

Learned counsel for the petitioner submits that the



alleged occurrence had reportedly taken place in the night of 19.12.2019. If the rape was committed on the daughter of the informant and she had come to know the same or from the circumstances she could have come to know about the same, there was no reason why she will not inform the correct fact to police on 20.12.2019. At first instance she informed the police about the teasing only, there was no allegation of commission of rape. There is no F.I.R. of 20.12.2019. The F.I.R. in this case has been lodged on 22.12.2019. The victim was medically examined on 23.12.2019 and the I.O. seized the clothes of the victim as well as the accused, but neither in the medical examination report nor from examination of the clothes by the F.S.L. any sign of rape could be found.

Learned counsel submits that it is a case of false implication of the petitioner and petitioner is in jail since 23.12.2019, he is hardly 19 years of age and at this stage he is required to be involved in study etc. to make his career.

It is further submitted that the case has not progressed after submission of charge-sheet and the co-accused Ajay Kumar has been granted privilege of anticipatory bail by a learned co-ordinate Bench of this Court in Cr. Misc. No. 22359 of 2020. Thus, the prayer for bail of the petitioner may be



considered at this stage.

On the other hand, learned A.P.P. for the State as well as the I.O. of the case have though opposed the prayer for bail of the petitioner but at the same time learned A.P.P. for the State as well as the I.O. have stated that so far as medical examination report and the F.S.L. report are concerned, they are not indicating about commission of rape. The allegation of rape has surfaced three days after the alleged occurrence.

Having regard to the facts and circumstances of the case considering that (i) Initially the allegation was of teasing but after three days of the alleged occurrence, the allegation of rape has surfaced; (ii) The informant and her gotni had though reportedly rushed to the spot and had allegedly apprehended this petitioner on 19.12.2019 itself no circumstances showing sign of rape was disclosed to the police on 20.12.2019; and (iii) The medical examination report and the F.S.L. report as informed to this Court by the I.O. and the learned A.P.P. are not corroborating the allegation of rape, the trial has yet not progressed and only charge-sheet has been filed at this stage, whereas, the petitioner is said to be a 19 years old boy who has to prepare himself for career also and the co-accused is said to have been granted privilege of anticipatory bail, the petitioner



has already spent about sixteen months in custody, in the opinion of this Court, no purpose would be served either in aid of the investigation or the prosecution by keeping the petitioner in jail. The petitioner is ready to abide by the terms and conditions to be imposed upon him for grant of bail, and there is no submission on behalf of the State that the release of the petitioner at this stage is likely to result in tampering with evidence or interfering with 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 1<sup>st</sup> Additional Sessions Judge-cum-Special Judge, POCSO Act, Purnea in connection with Barhara (Raghubansh Nagar) P.S. Case No. 265 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 while on bail, the petitioner shall not try to contact or get in touch with the family of the informant or the victim girl and he will cooperate in course of trial by putting appearance on each and every date fixed in the matter. Two consecutive defaults in putting appearance shall invite steps towards cancellation of bail by the learned court below itself.

This application stands disposed of accordingly.

**(Rajeev Ranjan Prasad, J)**

Rishi/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

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'.

