

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.7201 of 2021**

Arising Out of PS. Case No.-31 Year-2020 Thana- MAHILA PS District- Aurangabad

SHUSHIL KUMAR @ SUSHIL KUMAR Son of Janeshwar Paswan Resident
of Village - Titai Bigha, P.S. - Muffasil Aurangabad, District - Aurangabad.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Adv.

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

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

8 24-08-2021 Heard learned counsel for the petitioner and Mr. Anil
Kumar, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Mahila P.S. Case No.31/2020 registered for the offences under Sections 376(D)(A) of the Indian Penal Code read with Section 04 of POCSO Act and Sections 3(1)(i) (w)(ii), 3(2)(va) of SC/ST (POA) Act. He is in custody since 28.10.2020.

As per the prosecution story, when the victim girl went to ease out at about 2 pm (afternoon) on 25.10.2020 and was returning three boys forcibly took her to the peak of the mountain and they being under influence of liquor committed rape on her and left her. On the next day on 26.10.2020 at about

9:00 am the villagers saw her and then her family was informed whereafter she came to her house and told the entire story to her family members. She disclosed the name of this petitioner and two accused out of whom she did not identify one accused.

Learned counsel for the petitioner submits that it is a case of false implication of the petitioner who is a co-villager of the victim girl. The petitioner claims that the narration of the story by the victim girl is highly suspicious and does not find any support from the materials collected in course of investigation. The F.I.R. has been drawn by a Katib (a person expert in writing the deeds) namely Prahlad Kumar who has stated in course of investigation that he had written the F.I.R. He is not a witness to the occurrence and he was not present when the victim girl disclosed the name of the petitioner to her family members.

Learned counsel further submits that in the F.I.R. the victim girl says that on the next day about 9:00 am the villagers saw her and then informed to her family members whereafter she went to her home and there she disclosed the name of the petitioner. It is submitted that in course of investigation no co-villager has come forward to support this statement of the victim girl. There is no witness in the whole case diary saying that he

had seen the victim girl on 26.10.2020 at 9:00 am and thereafter he had informed to her family members.

Learned counsel further submits that it is highly suspicious that the victim girl would not disclose the alleged occurrence to the villagers who saw her at first instance and she would wait for her family members and then after going to home she will disclose the name of the petitioner to her family members where no co-villager was present.

Learned counsel further submits that although the age of the victim girl as per school certificate is said to be 29.02.2006 but the I.O. has pointed out that the year 2006 was not a leap year and, therefore, the date being 29th February seems to be a mistake. If this is considered together with the medical examination report, it may be found that her age is understated. She has been found aged between 17-19 years. The medical examination report says no sign of injury present on the parietal area, hymen ruptured (old) and the medical examination report opined that rape cannot be decided.

Learned counsel submits that in course of investigation only the brother and mother of the victim girl have come forward to say that when the victim had gone to ease her out and did not return, the brother of the victim along with some

co-villagers went in search of her but she was not found. Next morning some co-villagers informed the brother of the victim that her sister is lying in unconscious condition at Titai Bigha Pahar whereafter he went with the co-villagers and brought her home. He has further stated that after the victim gained consciousness then she disclosed the name of the accused persons. It is reiterated that no co-villager has come forward to say that he had gone with the brother of the informant in search of the informant during the previous night and then further no witness has stated that he had seen the victim on Titai Bigha Pahar.

It is, thus, submitted that the statement of the victim girl is not getting support from any corner and the material on the records, hence, at this stage, the petitioner may be enlarged on bail.

Mr. Anil Kumar, learned A.P.P. for the state has opposed the prayer for bail of the petitioner. He has read over some of the statements in the case diary. On query made by this Court as to whether there is any co-villager supporting the occurrence as stated in the F.I.R., learned A.P.P. admits that there is no witness at all on this point. In paragraph '12' and '63' the two co-villagers who have been examined by the I.O. have

only stated that they heard about the alleged occurrence.

Considering the facts and circumstances of the case, though this Court finds that the allegation against the petitioner is serious in nature but the kind of materials which have been noticed hereinabove by this Court, particularly that there is a difference in the statement of the victim girl and her brother, while the victim girl is saying in the F.I.R. that the co-villagers saw her on 26.10.2020 at 8-9 am and informed her family members but she has not stated that she was in unconscious condition when the villagers saw her and no co-villager has come forward to say in course of investigation that he had seen the victim lying unconscious on 26.10.2020, the disclosure of name has been made in her house where no co-villager was present and further the age of the victim girl as appearing from her school certificate and the medical examination report after ossification test gives two different age and further that the medical examination report does not indicate any sign of rape on the victim, no clothes or any other material of the victim has been seized by the I.O. and there is no F.S.L. report on this point, at this stage, this Court directs release of the petitioner 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 Additional District and Sessions Judge-VI-cum-Special Exclusive Judge (POCSO), Aurangabad in connection with Mahila P.S. Case No.31/2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that in course of trial the petitioner shall not try to contact the victim girl or her family members. If any such occurrence takes place, the victim or her family member may file an appropriate application in the learned court below for appropriate action.

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.

This application stands disposed of accordingly.

(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'.