

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67376 of 2021

Arising Out of PS. Case No.-103 Year-2019 Thana- MAHILA P.S. District- Patna

NITYANAND SHARMA @ LALLAN SHARMA, Son of Sri Rama Kant Sharma, Resident of Village - Chandaukhar, P.S.- Kurtha, District - Arwal (Bihar)

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Saket Gupta, Advocate
For the Opposite Party/s : Mr.Md. Aslam Ansari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 08-12-2021 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 and Mr. Md. Aslam Ansari, learned A.P.P. for the State.

This is the third attempt of the petitioner to obtain bail in connection with Sessions Case No. 72 of 2020 arising out of Mahila P.S. Case No. 103 of 2019 registered for the offence punishable under Section 376(D) of the Indian Penal Code.

Mr. Saket Gupta, learned counsel for the petitioner submits that he has taken this attempt within the short period from the date of the earlier rejection to point out certain materials which could not be noticed by this Court on an earlier



occasion. According to him, the alleged occurrence of rape took place on 04.08.2019, the victim lady has stated in her statement under Section 164 Cr.P.C. that she went to the hospital on 10th of August, 2019 when she was told about her pregnancy.

Learned counsel submits that it is not possible to find out the pregnancy within a period of six days from the alleged date of commission of rape.

To strengthen his submission, learned counsel submits that this petitioner admits his living relationship with the victim lady and has taken a plea that she being aged about 37 years had established physical relationship with the petitioner on her own sweet will and volition, later on she was pressurizing the petitioner to marry. The petitioner was not ready to marry because he is already married and has got children and this fact was well known to the informant.

Learned counsel submits that while the DNA report shows that the biological father of the foetus is this petitioner but being biological father of the foetus does not indicate about commission of rape on the victim. It is his further submission that neither the Manager of the hotel nor the two employees who have been made witnesses in this case have stated any information to them given immediately after the occurrence by



the victim lady as regards the rape committed on her.

Lastly, it is submitted that one of the co-accused against whom also there was an allegation of rape has been granted bail by a learned coordinate Bench of this Court vide Cr. Misc. No. 80955 of 2019.

On the other hand, Md. Aslam Ansari, learned A.P.P. for the State has opposed the prayer for bail of the petitioner. It is his submission that in course of investigation the Manager and the hotel staffs have confirmed that on the date of occurrence there was a booking of room no. 1412 in the hotel and a meeting had taken place in which 400-500 persons were present.

Learned A.P.P. submits that since the FSL report is *prima facie* indicating that the petitioner is the biological father of the foetus, a *prima facie* case is present against the petitioner and the allegations being of serious nature, he does not deserve privilege of bail.

Having regard to the submissions noticed hereinabove and the materials which have been discussed and further the observation already made by this Court in the operative part of the order dated 29.09.2021 giving liberty to the petitioner to renew his prayer for bail if the trial is not concluded within the



stipulated period, this Court finds no reason to take any different view of the matter at this stage. If the trial is not concluded in terms of the order dated 29.09.2021, the petitioner may renew his prayer for bail.

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'.

