

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4245 of 2022

Arising Out of PS. Case No.-277 Year-2021 Thana- UJIYARPUR District- Samastipur

PERMESHWAR PASWAN Son of Rupchan Paswan @ Late Rupchand paswan Resident of Village - Saidpur Zahid , P.S.- Ujiyarpur, Distt.- Samastipur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 17-09-2022 Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period of four weeks from today.

The petitioner seeks bail in connection with Ujiyarpur P.S. Case No. 277 of 2021 registered for the offence under Sections 376(A) of the Indian Penal Code and Section 4 of POCSO Act.

The accused/petitioner is named in the F.I.R. and is in custody since 14.09.2021.

The allegation against the petitioner is to commit rape/penetrative sexual assault upon daughter of the informant.

Learned counsel appearing on behalf of the petitioner



submitted that petitioner is the grand-father of the victim and due to family feud, petitioner has been falsely implicated, in the present case, which otherwise appears a rare allegation in social context. It is also submitted that medical report is negating the allegation of sexual assault, which further suggest false accusation. It is also submitted that the petitioner is retired government servant and he never faced this type of allegation, in his family life. It is also submitted that the petitioner is a man of clean antecedent. While concluding the argument, it is submitted that investigation of this case has been completed, for which, charge-sheet has already been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, submitted that victim specifically alleged against this petitioner to commit rape/penetrative sexual assault upon her, through, statement recorded under Section 164 of the Cr.P.C. It is also submitted that non-finding of injury suggesting sexual assault could not lead to a conclusion, *ipso-facto*, that rape was not committed upon, for the reason that rape is a legal finding not a medical one.

In view of the submissions, as made above, as victim specifically alleged against this petitioner to commit



rape/penetrative sexual assault upon her, which is duly supported through her statement recorded under Section 164 of the Cr.P.C., this Court is not inclined to grant bail to the petitioner, at present.

Accordingly, the prayer of bail of the petitioner is rejected herewith.

Trial Court/Special Court is directed to proceed with the matter, by taking it on board, on day-to-day basis, so as trial may conclude within specified time as prescribed under Section 35 (2) of the POCSO Act, 2012.

Superintendent of Police, Samastipur is directed to produced the charge-sheeted witnesses, as and when directed by the Trial Court/Special Court, for expeditious disposal of trial, within specified time, as provided under law, mentioned above.

(Chandra Shekhar Jha, J)

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