

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2515 of 2022

Arising Out of PS. Case No.-215 Year-2021 Thana- KHARHAGPUR District- Munger

Md. Nazeem @ Md. Nazim Alam Age 19 years (as per arrest memo given by the police), Gender- Male, S/O Md. Shahid Akhtar R/O village- Gaura, P.S.- Haweli Kharagpur, District- Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Sr. Advocate

For the Opposite Party/s : Mr. Anil Kumar Singh, No.-1 APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 03-09-2022 Heard learned senior 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 Haweli Kharagpur P.S. Case No. 215 of 2021 registered for the offence under Sections 341, 323, 376, 120B, 504 and 506 of the Indian Penal Code and Section 4 of the POCSO Act.

The accused/petitioner is named in the F.I.R. and is in custody since 05.07.2021.

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



Learned senior counsel, Shri Ajay Kumar Thakur, appearing on behalf of the petitioner submitted that it can be safely gathered from FIR, that petitioner was in friendly relations with victim/ informant and as he refused to marry with the victim girl, the present false case has been lodged. It is submitted that medical report does not support the allegation of assault, in want of any external injury. It is further submitted that as hymen was found intact, the allegation as regard to penetrative sexual assault is not appearing true on its face. While concluding the argument, it is submitted that investigation in this is complete for which chargesheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State, while opposing the prayer of bail, submitted that victim specifically alleged the petitioner to commit rape upon her through her statement, as recorded under Section 164 of the Cr.P.C. It is further submitted that rape is not a legal finding rather medical and, as such, finding of “hymen intact” is not sufficient to constitute *ipso facto* that rape was not committed upon her.

In view of the facts and circumstances as there is specific allegation of rape against this petitioner duly supported



by the statement of victim recorded under Section 164 of the Cr.P.C, this Court is not inclined to grant bail to the petitioner.

Accordingly, prayer for bail of the petitioner is rejected herewith, at present.

The learned Trial Court is directed to conclude the trial within the prescribed period of time under the law, as mentioned under Section 35(2) of the POCSO Act, 2012 as amended, by taking this matter on board on day to day basis.

The Superintendent of Police, Banka is directed to produce all the chargesheeted witnesses, as and when directed by the Trial Court, so as to conclude the trial within prescribed time period under the law.

(Chandra Shekhar Jha, J)

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