

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3895 of 2022

Arising Out of PS. Case No.-67 Year-2019 Thana- SARAI District- Vaishali

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Raj Kumar Son of Dinesh Sharma @ Jhanjhan Resident of Village - Akbar
Malahi, P.S. - Sarai, District - Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madhav Raj, Advocate

For the Opposite Party/s : Mr. Sadanand Paswan, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 21-09-2022 Heard learned counsel appearing on behalf of the

petitioner and learned counsel appearing on behalf of the State

through virtual Court proceedings.

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

The petitioner seeks bail in connection with Sarai P.S.

Case No. 67 of 2019 registered for the offence under Sections
341, 323, 354(B), 376(D)/34 of the Indian Penal Code, under
Sections 07 and 08 of the POCSO Act and under Sections 3(i)
(w) (i) (ii)/3/2(va) of the SC/ST Act.

This is the second bail petition of above named
petitioner, as his earlier bail petition was refused by one of the
learned co-ordinate Bench of this Court through Cr. App. (SJ)
No. 1308 of 2020 vide order dated 20.03.2020.



The accused/petitioner is named in the F.I.R. and is in custody since 28.08.2019.

The allegation against the petitioner is to commit rape along with other co-accused persons upon the daughter of informant, who is aged about 14 years, while she went to attend nature's call in a nearby mustard field at a distance of 500 meters from her home.

Learned senior counsel, Shri Yogesh Chandra Verma, appearing on behalf of the petitioner submitted that the basis of implication is hearsay version of the informant, which is admittedly, no eye witness of the occurrence. It is submitted that there is a material contradiction between the statement of victim as recorded under Section 161, *qua*, Section 164 of the Cr.P.C., as victim was pressurized by her family members to name this petitioner, while her statement was recorded under Section 164 of the Cr.P.C. It is also submitted that naming this petitioner under Section 164 of the Cr.P.C. is an after thought and with an oblique motive. It is further submitted that the petitioner, having almost similar allegation, has already been granted bail by one of the learned co-ordinate Bench of this Court through Cr. App. (SJ) No. 5302 of 2019 vide order dated 18.11.2019, where prayer of bail of this petitioner, was refused on the basis of



hearsay version of co-villagers that as petitioner having love affairs with victim. While concluding the argument, it has been submitted that even after three years of custody, the matter is pending for completion of prosecution evidence and, as such, trial is not likely to conclude in near future, where petitioner cannot be retained as under trial prisoner for indefinite period of time. It is also submitted that cognizance in this matter was taken by learned Trial Court on 04.05.2020, where trial was to conclude in one year as per provision laid down under Section 35(2) of the POCSO Act, 2012. Moreover, investigation has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, fairly conceded that the name of this petitioner is missing, while recording the statement of victim under Section 161 of the Cr.P.C., during course of investigation.

Beyond the text of submissions, it appears from the report of learned Trial Court dated 05.09.2022, as available on record, that still case is pending for prosecution evidence.

Considering the facts and circumstances as mentioned above and also considering the contradictory version of victim as recorded under Section 161, *qua*, 164 of the Cr.P.C. coupled



with the fact that trial of this petitioner is not likely to conclude in near future, let the petitioner, above named, is directed to be released on bail in connection with Sarai P.S. Case No. 67 of 2019 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J. VI-Special Judge, POCSO-cum-Children Court, Vaishali at Hajipur/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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