

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3802 of 2022

Arising Out of PS. Case No.-381 Year-2019 Thana- BANIAPUR District- Saran

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Krishna Sah, Son of Late Bangali Sah, Resident of Village - and Mouza - Harpur, Dakshin Tola, P.O.- Harpur Bazar, P.s.- Baniyapur, Distt.- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Marachhi Devi, W/o Shankar Sah, Resident of Village - and Mouza - Harpur, Dakshin Tola, P.O.- Harpur Bazar, P.s.- Baniyapur, Distt.- Saran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ravi Bhushan, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 02-11-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks.

In the present case, the petitioner seeks bail in connection with Baniyapur P.S. Case No. 381 of 2019 registered for the alleged offences under Sections 376, 323, 324 and 427/34 of the Indian Penal Code.

As per prosecution case, the informant filed a complaint petition before the court of learned C.J.M., Chapra wherein she alleged that the petitioner committed rape with her minor daughter and later on when the husband and the son of



the complainant went to scold him at his house, he assaulted them and also the complainant. Based on this complaint the FIR has been registered.

The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. No occurrence as alleged has ever taken place. The petitioner and the informant are neighbours and the petitioner was assaulted by the husband of the informant and his family members and for this occurrence Baniyapur P.S. Case No. 38 of 2020 was lodged. Even on the facts of the FIR, it is clear that no one has seen the occurrence and only the victim has narrated about the wrongful act done with her. It is very surprising that the investigating officer did not record the statement of the victim under Section 161 Cr.P.C. and also not produced the victim before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C. She was not produced before any Medical Board for her medical examination. Though the informant claimed that her daughter was treated by a doctor, the said doctor was not examined by the police who could have given his opinion as to whether rape was committed or not. Moreover, during investigation it has also come on record that the daughter of the informant was treated by the said doctor for



some other ailments and not for rape. Learned counsel further submits that though the complaint was sent for registration of FIR but it was without following the procedure as per guidelines laid down by the Hon'ble Apex Court. Learned counsel further submits that during investigation the fact also came to the knowledge that the daughter of the informant is mentally unsound and the witnesses have stated that no occurrence as alleged has ever taken place. The petitioner is in custody since 30.06.2021 and charge-sheet has been submitted in this case. The petitioner is having clean antecedent.

Learned APP opposes the prayer for bail submitting that specific allegation of rape has been made against this petitioner.

Perused the records.

Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the fact of non-examination of the victim girl and absence of medical report and further lack of substantive material on record to show the involvement of the petitioner with the alleged occurrence and also considering the clean antecedent of the petitioner along with his period of custody and submission of charge-sheet, the petitioner above named is directed to be



released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Saran at Chapra in connection with Baniyapur P.S. Case No. 381 of 2019, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

(i) One of the bailors will be a close relative of the petitioner.

(ii) The petitioner will remain present on each and every date fixed by the court below.

(iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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