

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5200 of 2022**

Arising Out of PS. Case No.-215 Year-2019 Thana- BAKHTIARPUR District- Saharsa

Shiva Kumar @ Shiva Mukhiya @ Shiva Kumar Mukhiya Son of Chano
MuKhiya Resident of Village- Itahara, P.S.- Sour Bazar, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

3 12-12-2022 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
Bakhtiyarpur P.S. Case No. 215 of 2019 registered for the
offence under Section 363, 366(A)/34 and 376(B A) of the
Indian Penal Code and Section 4 of the POCSO Act.

The accused/petitioner is not named in the F.I.R. and
is in custody since 23.09.2020.

The allegation against the petitioner is to kidnap the
minor daughter of informant, aged about 14 years, alongwith
other co-accused persons for the purpose of illicit intercourse,
whereafter kidnapping, victim was kept in confinement in



Punjab for two months, where rape was committed upon victim by co-accused persons on several occasions.

Learned counsel appearing on behalf of the petitioner submitted that this is the second bail petition as placed by this petitioner, as the earlier bail petition of the petitioner was rejected by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 3403 of 2021 vide order dated 26.05.2021, with a direction to the learned Trial Court to expedite the trial. It is also submitted that even under POCSO Act, 2012 through Section 35(2) of the Act, the trial is likely to be concluded within a year from the date of taking cognizance in the matter. It is also submitted that trial is yet to conclude and certainly for indefinite period of time, petitioner cannot be kept behind the bar. It is also submitted that the similarly situated co-accused persons has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 27294 of 2021 vide order dated 13.12.2021. It is also submitted that there is no allegation against this petitioner, as regard to sexual assault, as per statement of victim recorded under Section 164 of the Cr.P.C.

Learned APP, while opposing the prayer of bail fairly conceded the fact that trial is yet to conclude in this matter.



Considering the facts and circumstances as mentioned above, as petitioner is in custody since 23.09.2020, where trial is not likely to conclude in near future, let the petitioner, above named, is directed to be released on bail in connection with Bakhtiyarpur P.S. Case No. 215 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 Additional Sessions Judge-I-cum-Special Judge, POCSO Act, Saharsa/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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