

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.4762 of 2022**

Arising Out of PS. Case No.-130 Year-2020 Thana- MAHILA P.S. District- Araria

MD SAHBAZ @ SAHBAZ @ HIRWA @ MD SAHNAZ Son of- Md  
Ekhlake @ Ekhalak Resident of Village - Gaiyari, Ward No. -13, P.S. -  
Araria, District - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Md. Ziaul Quamar, Advocate

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

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

3      09-09-2022                      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 Araria  
(Mahila) P.S. Case No. 130 of 2020 registered for the offence  
under Sections 376(3), 506 and 34 of the Indian Penal Code and  
Section 04 of POCSO Act.

The accused/petitioner is named in the F.I.R. and is in  
custody since 24.09.2021.

The allegation against the petitioner is to commit rape  
upon the minor daughter of informant, aged about 16 years,  
along with other co-accused persons.



Learned counsel appearing on behalf of the petitioner submitted that petitioner has been falsely implicated in the present case, to create pressure to marry with daughter of the informant. It is also submitted that entire allegation is false as hymen of victim found intact, during medical examination, denying thereof any penetrative sexual assault/rape. It is also submitted that as per medical report, the age of victim appears to be major, as her age found as 17 to 19 years. 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 supported the allegation of rape against this petitioner, through her statement recorded under Section 164 of the Cr.P.C. It is also submitted that as hymen found intact, it could not lead to a conclusion, *ipso-facto*, that rape was not committed upon. It is also submitted that rape is legal finding not a medical.

In view of the submissions, as made above, as victim specifically alleged this petitioner as regard to allegation of rape 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 appellants is rejected herewith.

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

Superintendent of Police, Araria, is directed to produce 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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