

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9578 of 2022

Arising Out of PS. Case No.-61 Year-2021 Thana- MAHILA P.S. District- Rohtas

Abhishek Kumar @ Gorakh Son of Mahendra Kumhar @ Mahendra Prajapati
R/O Village- Chorkup, P.S.- Tilauthu, District- Rohtas At Sasaram

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Babu Nandan Prasad, Advocate

For the Opposite Party/s : Mr.Binay Krishna, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 15-11-2022 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 Mahila
P.S. Case No. 61 of 2021 registered for the offence under
Sections 376 of the Indian Penal Code, 4 POCSO Act and 3(2)
(va) of Schedule Caste and Schedule Tribes.

The accused/petitioner is named in the F.I.R. and is in
custody since 24.08.2021.

The allegation against the petitioner is to commit
rape/penetrative sexual assault upon the minor daughter aged
about 14 years of the informant, while she was alone in her
home.

Learned counsel appearing on behalf of the petitioner



submitted that petitioner has falsely been implicated in the present case for the simple reason that the love affairs of petitioner with the victim was not acceptable by her parents. It is submitted that it is also apparent from statement of the victim as recorded under Section 164 of the Cr.P.C., that petitioner was in friendly terms with her. It is further submitted that the medical report of victim is also not suggesting anything towards commission of rape. It is also submitted that the matter has also been compromised between the parties. While concluding the argument, it is submitted that petitioner is a man of clean antecedent and, moreover, investigation of this case is complete, 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 submitted that victim specifically alleged the petitioner as regard to commit rape/penetrative sexual assault upon her, while she was alone at her home while recording her statement under Section 164 of the Cr.P.C.. It further submitted that rape is a legal finding not a medical one and, as such, absence of any visible physical injury is not sufficient to lead conclusion *Ipso facto* that rape was not committed upon her. It is also submitted that offence alleged is heinous and non-compoundable and as



such the compromise as claimed to be arrived between the parties is of no bearing over the merit of this case.

In view of the facts and circumstances as mentioned above, as victim specifically alleged this petitioner to commit rape/penetrative sexual assault upon her through her statement recorded under Section 164 of the Cr.P.C., this Court is not inclined to grant privilege of bail to the petitioner, at present.

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

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

The Superintendent of Police, Sasaram at Rohtas, is directed to produce the charge-sheeted witnesses, as and when directed by the learned Trial Court/Special Court, for expeditious disposal of trial, within specified time, as prescribed under the law, as mentioned above.

(Chandra Shekhar Jha, J)

R.S.Sen/-

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