

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9924 of 2022

Arising Out of PS. Case No.-290 Year-2021 Thana- RAMNAGAR District- West Champaran

Shubham Gupta @ Sunny @ Shubham Kumar S/O Raju Gupta @ Raju Prasad Resident Of Shanti Mai Sthan, Killa Mohalla, Ward No. 20, Naya Bazar Chowk, Bettiah, P.S.- Bettiah (Town), District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 22-11-2022 Heard learned counsel appearing on behalf of the petitioner and learned APP 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 Ramnagar P.S. Case No. 290 of 2021 registered for the offence under Sections 376, 506, 379, 323 and 34 of the Indian Penal Code and under Section 4 of the POCSO Act, in which cognizance has been submitted u/s 376, 341, 323, 504 and 34 of the Indian Penal Code and Section 4 of the POCSO Act.

The accused/petitioner is named in the F.I.R. and is in custody since 17.12.2021.

The allegation against the petitioner is to commit rape



upon minor daughter of the informant, aged about 16 years, along with other co-accused persons, and also to cause physical assault and to make a mark over her chest as 'Sunny 5'.

Learned counsel appearing on behalf of the petitioner submitted that petitioner has falsely been implicated in this case only for previous enmities. It is submitted that as one of the co-accused, Sandeep Dubey, lodged an earlier case i.e. Ramnagar P.S. Case 289 of 2021 just to get it counter, the present case has been lodged, whereas the said co-accused, Sandeep Dubey, facing general and omnibus allegation through present FIR, has been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 69335 of 2021 vide order dated 26.04.2022. It is submitted that present FIR lodged after delay of nine (9) months without any just explanation and also of recording of statement of victim under Section 164 of the Cr.P.C., where tutoring cannot be ruled out, as victim was with her parents for long period. It is further submitted that medical report is not appearing genuine, for the reason that when allegation is of nine months earlier, how the victim was found involved in recent sexual activities, as opined through said medical report. It is also pointed out that victim appears to be major in her medical examination and her age seems between 16



to 19 years. While concluding the argument, it is submitted that 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 duly assisted by learned counsel for the informant, while opposing the prayer of bail submitted that delay is well explained in FIR itself, as the victim was minor at the time of occurrence and suffering from trauma received out of occurrence and for the said reason FIR was lodged after delay of nine (9) months. It is further submitted that victim specifically raised allegation of rape against this petitioner, through her statement as recorded under Section 164 of the Cr.P.C., with further allegation as how brutally she was physically tortured and in the manner the mark 'Sunny 5' was made over her private part, which is in corroboration with medical report.

In view of the facts and circumstances as mentioned above, as victim specifically alleged this petitioner to commit rape upon her, while recording her statement as made under Section 164 of the Cr.P.C. which is in full corroboration with her medical report, where recent sexual activity was noticed along with mark of physical assault/torture, 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, Bagaha, West Champaran, 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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