

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22766 of 2021

Arising Out of PS. Case No.-205 Year-2020 Thana- DESARI District- Vaishali

Raushan Kumar, Son of Ram Ishwar Singh, R/O Village- Rampur Baghel,
P.S.- Desari, District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Advocate
For the Opposite Party/s : Md. Mustaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

7 10-05-2022 The applicant/accused in Crime No. 205 of 2020 registered with Desari Police Station for the offences punishable under Sections 363, 365 and 376(D) r/w Section 34 of the Indian Penal Code as well as Sections 6, 8 and 10 of the POCSO Act, by this application is seeking his release on bail during pendency of the trial.

The learned counsel for the applicant by placing reliance on the order dated 07.10.2021 passed in Criminal Misc. No. 13203 of 2021 by the coordinate Bench of this Court has argued that co-accused Vishal Patel @ Vishal Kumar Patel, against whom similar allegations are made, has been released on bail and therefore following the principle of parity, the applicant is also entitled for bail. It is further argued that the victim of the crime in question is major as seen from the medical report and the medical evidence is not supporting her



case as no external or internal injuries were noticed on her body.

The learned Additional Public Prosecutor opposed the application by filing counter affidavit and contending that the statement of the victim is clear.

I have considered the submissions so advanced and also gone through the order passed by the coordinate Bench of this Court on 07.10.2021 granting bail to co-accused, Vishal Patel @ Vishal Kumar Patel. He was directed to be released on bail with the following observations:-

“ Considering the rival submissions as also the facts and circumstances of the case, this Court for the purposes of grant of bail is inclined to accept the submissions advanced by the petitioner’s counsel ”.

It is seen from the order passed by the coordinate Bench of this Court that the learned counsel for the applicant/accused therein had argued that the statement of the victim is at variance with the FIR on the manner of recovery of the victim, the accused persons belongs to the family of the opponent of the sitting Mukhiya and the implication is based on political consideration, medical examination of the victim done just the next day after the recovery has not shown any sign of forcible sexual intercourse, the victim has been



assessed to be aged between 18 to 20 years, the applicant/accused is in custody for 14 months.

This is a case of gang rape. The Hon'ble Supreme Court in the matter of **B. C. Deva @ Dyava Versus The State of Karnataka** reported in **(2007)12 Supreme Court Cases 122** has categorically held that it is absolutely not necessary that medical evidence should corroborate the version of the victim so far as the case of rape is concerned. It is further held by the Hon'ble Apex Court that in the cases relating to sexual exploitation of females and more particularly female child, the Court should keep in mind broader probability of prosecution case rather than swaying itself with minor contradictions or omissions in the case of the prosecution.

The case in hand is that of gang rape on a female victim by two persons including the present applicant. The statement of the victim is very clear on this aspect. Her statement is also recorded under Section 164 of the Cr.P.C. wherein she has maintained her stand of commission of rape by the accused persons including the present applicant. She has stated about kidnapping her by the applicant and the co-accused when she had gone for easing, detaining her in a secluded house and commission of rape on her which she



describes as “Galat Kam”.

Unfortunately, it appears that the documentary evidence regarding age of the victim is not collected by the prosecuting agency. However she was subjected to the radiological examination and her bony age in ossification test is found to be 18 to 20 years.

Be that as it may, even if it is assume that the victim is more than 18 years of age still her statement before the police as well as before the Magistrate under Section 164 of the Cr.P.C. is to the effect that she was subjected to gang rape by the applicant and the another accused person.

In this view of the matter, I am not inclined to grant parity to the applicant. There is overwhelming evidence of commission of rape by him in the form of statement of the victim. Hence, the application is rejected.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the appellant/accused.

(A. M. Badar, J)

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