

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35816 of 2021

Arising Out of PS. Case No.-178 Year-2019 Thana- MAHILA P.S. District- Araria

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KHURSHID, Son of Jainul Resident of Village - Bagdarha, Ward No.5, P.S.-
Jokihat, Distt.- Araria.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Anil Prasad Singh, Advocate.

For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 07-02-2022 Heard the parties through video conferencing.

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

Let the defect(s), if any, be removed within two
weeks of the complete start of the physical Court in normal
course.

The petitioner, who is in custody since 14.10.2020,
seeks regular bail in connection with Araria (Mahila) P.S. Case
No. 178 of 2019 for the offence punishable under Section
376(D) of the Indian Penal Code.

The prosecution case, in brief, is that a written report
was submitted by the informant Bibi Jainab alleging therein that
one Rayees along with other co-accused on the pretext of
getting gas connection in the name of the victim called her and



the victim boarded the tempo of Khurshid (petitioner) and they took her to the garage of Matin @ Munna where co-accused Rayees caught the informant and gagged her mouth. Thereafter all the accused persons committed gang rape with the informant one by one and left the informant in the morning at 4 O'clock at Baria Chowk.

Learned counsel appearing on behalf of the petitioner submits that the petitioner is innocent and he has falsely been implicated in this case. He further submits that the incident took place on 13.12.2019 and the F.I.R. has been lodged after a delay of 6 days on 19.12.2019 and in the meantime the father of the informant has not lodged any report before the local police station which is only 25 Kms away from the place of the alleged occurrence where the daughter of the informant was raped. However on narration of false story just to implicate the petitioner, allegation under Section 376(D) IPC has been made against all the named accused persons in the F.I.R. He further submits that the petitioner is the tempo owner and from the F.I.R., it appears that the victim had boarded the said tempo and the alleged rape was committed in the garage of one Matin @ Munna and the main allegation is against co-accused Rayees who had caught the victim and gagged her mouth. The petitioner has been made accused in the present case due to dirty village



politics. Petitioner is in custody since 14.10.2020.

Learned A.P.P. for the State has relied upon the statement of the victim under Section 164 Cr.P.C. wherein she has supported the incidence and has named the present petitioner that he along with other co-accused has gang raped her and kept her in confinement for several days. However he submits that so far as the investigation is concerned, nothing has come as to why any informatory petition or any case was not lodged in the local police station, that apart he submits that the petitioner cannot be released on bail on mere ground of delay made in lodging the F.I.R. considering the nature of offence in which he has been made accused.

Considering the aforementioned facts and circumstances of the case, it appears that in course of investigation, the father of the victim has supported the case, however in the medical report at Para-29, no conclusive finding about alleged rape has been recorded, there is delay of six days in lodging of the F.I.R. even considering the distance of the police station from the place of occurrence, the father of the victim remained silent by not giving any information to the police with respect to the alleged incidence or missing of her daughter (victim), period of custody of the petitioner and there is no allegation of tampering with the evidence or influencing



the witnesses, this Court is of the opinion that the petitioner above named be released on regular bail. The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate 1st Class, Araria in connection with Araria (Mahila) P.S. Case No. 178 of 2019, subject to the following conditions:-

(1) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(2) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(3) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(4) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bonds.

(Purnendu Singh, J)

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