

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36686 of 2021

Arising Out of PS. Case No.-440 Year-2020 Thana- PURNEA SADAR District- Purnia

MD. NASIR S/o Md. Habbu R/o village- Kisnauor, Naya Tola, P.S.- Sadar
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vikram Singh

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 22-02-2022 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.

The petitioner, who is in custody since 02.12.2020,
seeks regular bail in connection with Sadar Muffasil P.S. Case No.
440 of 2020, for the offence punishable under Sections 341, 323,
307, 376 (d), 504, 509, 34 of the Indian Penal Code.

The prosecution case, in brief is that the informant who
is the victim, in her written complaint statement has made
allegation that while her husband had gone to market, one Sabir
called her on phone that her husband met with an accident. She
reached at the place disclosed by Sabir, where she saw Md. Nasir
along with two other unknown persons who started misbehaving
with her. She has made specific allegation against Md. Sabir, Md.
Nasir and Md. Sagir that they committed gang rape and attempted
to murder her. She, however, managed to escape and informed her



husband about this incidence. Her husband immediately reached at the place of occurrence. It is further alleged that the accused persons have made inappropriate video and took photographs of the informant and even threatened her husband to kill and also threatened that they will make the video and photographs viral.

Learned counsel appearing on behalf of the petitioner submits that the allegations made in the FIR are false and concocted as no such incidence had ever taken place. Victim is not consistent with her statement the fact is apparent from the perusal of paragraph No.8 of the case diary wherein her statement u/s 161 Cr.P.C. before the Investigating Officer that the accused persons had prepared objectionable video. However, subsequent to the recording, her statement u/s 161 Cr.P.C., she has filed a compromise petition dated 04.01.2021 whereas her statement under Section 164 Cr.P.C. she has stated that the petitioner has also committed rape on her. The allegation attributed to the petitioner is prima facie false and fabricated as is evident from the fact that there is no reference of place of occurrence manner of occurrence use of any threat of any weapon by the wrongdoers as well as the informant never raised any alarm and further she was allowed to contact with her husband in presence of the wrongdoer at the place of occurrence and as such all these facts clubbed



together do not make the case of rape or any occurrence purported to have taken place. The aforesaid facts would further revealed by the fact that the informant herself narrated the incident before the police in absence of her husband though the occurrence has been taken place in presence of her husband and as such the instant case has been lodged by the informant with some oblique motive. The informant identified the petitioner being known to her prior to the said allegation but this vital fact is missing in the first information report. During course of investigation the allegation against the petitioner has not been supported by any witnesses as well as medical report and as such whole prosecution fails on this ground itself.

Considering the manner in which the allegation has been made and the story and veracity of the allegation it appears that the allegation against the petitioner are not sustainable in the eye of law. The FIR itself shows that the FIR was lodged after much delay on 30.11.2020 relating to the incidence, which had taken place on 27.11.2020 and the same cannot be relied upon.

Learned A.P.P. for the State has opposed the payer for grant of bail to the petitioner and submits that the specific allegation has been made against the petitioner who has committed rape along with other co-accused as would appear from



the statement made under Section 164 Cr.P.C. which has evidentiary value and while statement under Section 161 Cr.P.C. has no evidentiary value and as such the petitioner does not deserve privilege of bail.

Having heard learned counsel for the parties and perused the materials available on record, allegation in the FIR, especially initial statement of the victim informant under Section 161, 164 Cr.PC as well as compromise petition (Annexure-3) filed by her and vis-a-vis her statement recorded in the Court during trial, she has been declared hostile and in this regard, the petitioner has brought the copy of deposition of the witness dated 22.08.2021 (Annexure-2), this Court finds that there are material contradictions and inconsistencies with regard to committing rape by the bail petitioner. If the statements as referred to above are read in entirety, this Court is compelled to agree with learned counsel for the bail petitioner that **the witness may lie but circumstances may not lie.** In my opinion, the petitioner prima facie has made out a case to be released on bail.

Accordingly, 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 Chief Judicial



Magistrate, Purnea, in connection with Sadar Muffasil P.S. Case No. 440 of 2020, 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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