

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39563 of 2021

Arising Out of PS. Case No.-67 Year-2020 Thana- MAHILA P.S. District- Samastipur

1. RAKESH KUMAR @ BHULLA Son of Ramadhar Roy @ Shashi Kumar Yadav Resident of Village - Simri Alampur, P.S. - Vidyapatinagar, District - Samastipur.
2. Hemant Kumar Son of Late Devilal Rai @ Dev Lal Roy Resident of Village - Simri Alampur, P.S. - Vidyapatinagar, District - Samastipur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Advocate.
For the Opposite Party/s : Mr. Arun Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 04-08-2022 Learned counsel for the petitioners is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

Heard Mr. Jitendra Narain Sinha, learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State.

In compliance of the earlier order dated 22.06.2022, supplementary affidavit has been filed on behalf of the Superintendent of Police, Samastipur and the same is kept on record.

The application for grant of bail to the petitioners, above named, who have been made accused and put behind the



bar in connection with Mahila P. S. Case No. 67 of 2020 registered for the offences punishable under Sections 147, 148, 149, 364/511, 376(D)(a)/511, 120 (B) of the Indian Penal Code and Section 27 of the Arms Act and Section 4, 6, 8, 10, 12, 16 and 18 of the Protection of Children from Sexual Offences Act.

As per the prosecution case, it is alleged that the complaint was filed by informant on 18.06.2020 in the POCSO Court, Samastipur against all the F.I.R. named accused persons alleging therein that on 19.05.2020 at about 08:00 P.M. all the accused persons including these petitioners variously armed with came to the house of the complainant on one four wheeler and two motorcycles and all of them assaulted, misbehaved and outraged the modesty of the informant and tried to commit rape upon her. It is further alleged that prior to this incidence on 10.04.2020 all the accused persons had committed rape upon her younger sister and she was forcibly prevented to institute any complaint.

Learned counsel appearing on behalf of the petitioners submitted that from the F.I.R., it is evident that general and omnibus allegation has been levelled against all the accused persons and in fact, on account of previous enmity and land dispute this complaint case was instituted, which was later



on referred to the Police under Section 156 (3) of the Cr.P.C. and the present F.I.R. has been registered. It is next submitted that the occurrence is said to have taken place on 19.05.2020, however, the present complaint was lodged on 18.06.2020 in the POCSO Court. It is also submitted that earlier on 13.04.2020, a complaint was filed by the younger sister of the informant that on account of dispute of grazing of her goat on 10.04.2022, she was beaten by the co-accused persons for which Sanha being S.D. No. 394 of 2020 dated 13.04.2020 in Vidyapati Police Station, however the same was compromised after Panchayati. It is further submitted that earlier F.I.R. bearing Mahila P. S. Case No. 28 of 2020 was registered on 21.05.2020 in Mahila Police Station alleging therein that on 10.04.2020, the petitioners and other co-accused persons committed rape upon her minor daughter, thereafter, all the family members including the complainant were confined in their house and some how or other she escaped on 21.05.2020 and came to Mahila Police Station and got registered Mahila P. S. Case No. 28 of 2020, however, contents of both the F.I.Rs are contradictory.

It is next submitted that the complainant is a habitual litigant and she had got filed Vidyapati Nagar P. S. Case No. 83 of 2010 by the uncle of the victim, namely, Ajay Kumar



Sah, apart from this the complainant has also got filed C.R. Case No. 157 of 2018 by the cousin of the victim and C.R. Case NO. 89 of 2020 by the sister of the victim and finally a case bearing no. C.R. Case No.90 of 2020, which shows the conduct of the family members of the informant. It is further submitted that one of the co-accused persons having identical allegation, namely, Nivas Kumar @ Niwas Kumar has already been granted bail by learned co-ordinate Bench of this Hon'ble Court in Cr. Misc. No. 19661 of 2022 vide order dated 12.07.2022 and moreover, these petitioners are in custody since 10.02.2021 and save and except the earlier case lodged by the mother of the informant, there is no other case pending against these petitioners.

On the other hand, learned APP for the State vehemently opposes the bail application and submits that there is specific allegation against all the accused persons including these petitioners that they have outraged the modesty of the informant and molested her.

Having considered the submissions made on behalf of the parties and taking into account the fact that with regard to an occurrence, which was taken place on 19.05.2020, the complaint was lodged on 18.06.2022, apart from the fact that



the contradictory statement made in both the F.I.Rs bearing Mahila P. S. Case no, 28 of 2020 and the present F.I.R. in as much as the co-accused person having identical allegation has granted bail by this Hon'ble Court, let the petitioner, above named, be released on bail on furnishing bail bonds of Rs. 20,000/- (Rupees twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-VI, cum-Special Court (POCSO), Samastipur in connection with Mahila P. S. Case No. 67 of 2020, subject to the condition that one of the bailors will be the close relative of the petitioners with further conditions which are as follows:-

- (i) The petitioners will cooperate in conclusion of the trial.
- (ii) They will remain present on each and every date of trial till disposal of the case.
- (iii) They will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, their bail bonds will liable to be cancelled.
- (v) The Court below shall verify the criminal



antecedent of the petitioners and in case at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take step for cancelling of bail bond of the petitioners. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Harish Kumar, J)

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