

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41525 of 2021

Arising Out of PS. Case No.-432 Year-2019 Thana- BARACHATTI District- Gaya

Mukesh Paswan @ Mukesh Kumar Paswan, S/o Ganesh Paswan, R/o village-
Pratapi, P.S.- Barachatti, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nagadeo Choubey, Advocate
For the Opposite Party/s : Mr.Umanath Mishra, APP

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

3 25-04-2022 The applicant/accused in Crime No. 432 of 2019 registered with Barachatti Police Station for the offences punishable under Sections 376, 379, 323, 504 and 506 r/w Section 34 of the Indian Penal Code as well as Sections 4/6 of the POCSO Act, 2012, by this application is seeking his release on bail during pendency of the trial.

Earlier bail application of the applicant was rejected by the coordinate Bench of this Court vide order 02.07.2020 passed in Criminal Misc. No. 5787 of 2020. The second application is being entertained in view of its allotment to this Court.

Heard the learned counsel appearing for the applicant/accused. He drew my attention to the FIR of the alleged victim female child and argued that the same is



mentioning totally improbable story in the light of statement of her parents and sister. By drawing attention to statement of witnesses Ramchandra Manjhi and Ishwar Manjhi recorded by police during investigation, it is argued that the applicant is falsely implicated in the crime in question. With this, it is argued that the applicant who is behind the bars from 18.09.2019 deserves to be released on bail.

The learned Additional Public Prosecutor opposed the application by contending that the victim has categorically averred that the applicant had committed rape on her while she was sleeping in front of her house. The learned Additional Public Prosecutor further argued that the offence is serious and the second application deserves to be rejected.

I have considered the submissions so advanced and also perused the materials placed before me.

While the first application of the applicant was rejected vide order dated 02.07.2020 passed in Criminal Misc. No. 5787 of 2020 with an observation that there are certain materials against the applicant, the coordinate Bench of this Court had permitted the applicant to renew his prayer for bail in the event the trial is not concluded within a period of nine months. It is reported that despite of passes of nine months



time, the trial is not concluded. The learned Additional Sessions Judge- VII, Gaya, vide his report dated 07.02.2022 has stated that out of eleven charge sheeted witnesses, none has been produced by the prosecution and therefore, the trial could not be commenced.

Be that as it may, the statement of the alleged victim of the crime in question recorded under Section 161 of the Cr.P.C. is treated as the First Information Report by the Investigating Officer. In the statement of the victim female child, she has not mentioned her age. However police appears to have made endorsement in her statement that the alleged victim female child is 16 years old. It is reported by her to the police in the form of her statement under Section 161 of the Cr.P.C. that on 06.09.2019, at about 10 P.M., she returned to her house after answering the nature's call. Prior to that the present applicant had entered in her house with an intention to commit theft and had concealed himself in her house. She has further stated that then at 10.15 P.M. she locked the outer gate of her house and slept outside the main gate to her house. She woke up to find that the applicant tied her mouth by means of her scarf and committed rape on her. Thereafter as per version of the alleged victim, the applicant untied the scarf and she



shouted, members of her family gathered and questioned the applicant. The applicant confessed his crime. However he called inmates of his house, who came there armed with weapons and looted an amount of Rs.10,000/- along with the box from her house. It was decided to convene a meeting of a Panchayat but as the applicant and other accused persons are not in a mood to follow the decision of the Panchayat, on instructions from the Panchayat, they are visiting the police station. Thus the FIR of the incident dated 06.09.2019 was lodged on 15.09.2019 in the form of the statement under Section 161 of the Cr.P.C. of the alleged victim.

The victim alleged that the applicant had kept himself concealed inside her house and she had locked her house from outside. Papers of investigation shows that at least parents and younger sister of the victim were inmates of that house. Her father and mother in their statement had stated that they both were sleeping on the roof of the house. Upon hearing shouts they come down and then their daughter told them of about the incident. They both further stated that thereafter the applicant summoned his relatives who came there armed with weapons and looted Rs.10,000/- as well as box from their house. Younger sister of the applicant, as per papers of



investigation was sleeping with her. She has feigned ignorance about the incident. She stated that her sister i.e. the victim had gone for easing and then there was chaos. Some people assaulted her parents and went away.

On this backdrop, witnesses Ramchandra Manjhi and Ishwar Manjhi are stated that there was monetary dispute between brother of the victim and the applicant. The applicant had gone to the house of the victim for demanding back the money advance by him. Then there was quarrel between parties and both parties suffered injuries in that quarrel.

It is thus clear that the FIR was lodged belatedly. The prosecution witnesses themselves are stating that there was monetary dispute between the parties and the applicant had gone to the house of the victim for getting back the money advance by him. The papers of investigation are not clarifying the fact that when the applicant was locked inside the house by the victim, how the applicant could manage to come out and to commit rape on her when her younger sister was sleeping with her. Ultimately on the instruction of Panchayat the matter was reported.

Report of medical examination of the victim shows that her bony age according to the ossification test is between



18 years to 19 years. Except this no other evidence is collected by the prosecution regarding age of the victim. Medical Report is not supporting the case of commission of rape on the victim. In this view of the matter, further pretrial detention of the applicant is not warrant and therefore, the order :-

i. The application is allowed.

ii. The applicant/accused in Crime No. 432 of 2019 registered with Barachatti Police Station be released on bail on executing P.R. bond of Rs.10,000/- (Rupees Ten Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be



involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

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.

Bhardwaj/-

(A. M. Badar, J)

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