

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44253 of 2021

Arising Out of PS. Case No.-652 Year-2020 Thana- FATUA District- Patna

KAUSHAL SHARMA S/o Late Mahendra Mistry R/o village- Parwalpur,
P.S.- Parwalpur, District- Nalanda, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Surendra Kumar Singh

For the Opposite Party/s : Mr.Md. Anbzarul Haque Sahara

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 12-01-2022 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation POCSO Special Case no. 204/2020 arising out of Fatuha P.S. Case no. 652 of 2020 on account of COVID 19 Pandemic, requiring social distancing.

Heard learned counsel for the petitioner, Sri Surendra Kumar Singh, learned counsel for the informant Sri Surendra Kumar Mishra and Sri Anbzarul Haque Sahara, learned APP for the State.

Petitioner seeks bail in connection with POCSO Special Case no. 204/2020 arising out of Fatuha P.S. Case no. 652 of 2020 registered for the offence punishable under sections 363, 364, 365, 366 and 34 of the Indian Penal Code.

Learned counsel for the petitioner submits that



petitioner is in custody since 16.9.2020, is person with clean antecedent and charge sheet has been submitted and the informant alleges that his daughter had gone to market on 7.9.2020 at about 1 p.m., thereafter she did not return and the informant had searched but her mobile was switched off and the informant believed that his daughter was kidnapped by the petitioner who is brother-in-law of Rajeev Sharma who is neighbour of the informant. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the petitioner and the victim were known to each other as the petitioner often visited his brother-in-law Rajeev Sharma and as such she willingly accompanied the petitioner which was known to the informant which is evident from the fact that the date of occurrence is alleged to be 7.9.2020 and the FIR came to be instituted on 11.9.2020 without explaining the delay. Learned counsel submits that since family of the victim was aware that the victim had willingly accompanied the petitioner as such FIR was not being instituted in time and even the victim was reluctant to return back. Learned counsel further submits that after the victim came to her home and on parental pressure, she made statement under section 164 Cr.P.C alleging that this petitioner kidnapped her in



a tempo and took her to a room and disrobed her and committed rape upon her. Learned counsel submits that if what has been alleged by the victim in her statement under section 164 Cr.P.C is true then in medical examination said fact should have come but from perusal of the injury report as annexed with the case diary, it does not show that any injury was found on the body of the victim nor it records that spermatozoa was found on the genitalia or thigh of the victim rather it records that sealed vaginal semen for microscopic examination to see any semen on foreign body. It is thus, submitted that the petitioner merely because was in love with the victim came to be implicated falsely under parental pressure of the victim.

Learned counsel for the informant vehemently opposes the prayer for bail but is not able to meet the submissions of learned counsel for the petitioner with regard to the injury report nor is in a position to counter the submissions of learned counsel for the petitioner as to why there is delay in instituting the FIR.

Learned APP also opposes the prayer for bail.

Considering the facts that petitioner is in jail custody, charge sheet has been submitted and is a person with clean antecedent and the medical report does not justify rape nor the



same was contradicted by learned counsel for the informant, the petitioner is directed to be released on bail on furnishing bail bonds of Rs 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Addl. Sessions judge VII-cum-Special Judge POCSO, Patna in POCSO Special Case no. 204/2020 arising out of Fatuha P.S. Case no. 652 of 2020.

(Satyavrat Verma, J)

s.hassan/-

U		T	
---	--	---	--

