

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41924 of 2021

Arising Out of PS. Case No.-25 Year-2019 Thana- MAHILA PS District- Gaya

PAWAN KUMAR RAJBANSHI @ PAWAN KUMAR S/O LATE KRISHNA
RAJBANSHI R/O VILLAGE-SARBHANA, P.S-WAZIRGANJ, DISTRICT-
GAYA.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Navnit Kumar, Advocate
For the Opposite Party/s	:	Mr. Ajit Kumar, A.P.P

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 28-04-2022 Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

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

The petitioner seeks regular bail in connection with
Mahila P.S. Case No. 25 of 2019, for the offence punishable
under Section 376 of the Indian Penal Code.

The prosecution case, in brief, is that on the assurance
of marriage, the petitioner indulged her in to sexual relationship
and as a result thereof a girl child born.

This Court found it proper to get the D.N.A. of the
girl child to establish the parentage of the said as to whether the
DNA of the present petitioner matched with the child which the
informant claimed to be born out of physical relationship with



the petitioner. A report was called for vide order dated 03.03.2022 and in compliance of the said order, the Assistant Director Forensic Science Laboratory, Bihar, Patna on the basis of scientific analysis of the DNA of the girl child namely Bharti Kumar and the petitioner found that the present petitioner to be excluded to be biological father of the source of Exhibit 'B' which relates to blood sample of Bharti Kumari.

Learned counsel appearing on behalf of the petitioner submits that from perusal of the F.I.R. and allegation made against the petitioner therein the only allegation, which has been levelled against the petitioner is that he repeatedly rape her on the pretext of marriage and it has specifically been alleged that due to physical relationship established by the petitioner a girl child was born. The DNA report falsify the entire allegation made in the F.I.R. The petitioner is in custody since 14.12.2020.

Learned A.P.P. for the State has opposed the prayer for grant of bail to the petitioner and submits that so far as DNA is concerned it has only the parentage of the alleged girl child, but the informant in her statement made under Section 164 Cr.P.C. has alleged that petitioner has raped her repeatedly on the pretext that he would marry her and as such the said fact and D.N.A. will not dilute under Section 376 of the I.P.C.



Having heard the rival contention of the parties as well as the allegation made in the F.I.R. it appears that petitioner has not denied the fact that he was in any love affairs with the informant and making such assurance of marriage is quite natural. However, the specific allegation of the informant that it is petitioner who established physical relationship with the informant and out of which a girl child was born, which has been refuted by the scientific report relating to DNA match and as such the allegation cannot be sustained. If there is any any love relationship between the parties, the same can be mutually agreed upon and in this regard the petitioner as well as the informant can arrive at any conclusion. However, the said fact cannot make the petitioner to further remain in custody. Prima facie, it appears that the petitioner has made out a case to be released on bail. The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs. 25000/- (Rs. Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Gaya in connection with Mahila P.S. Case No. 25 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.

It is made clear that the above observation made in this order shall not affect the conduct of the trial.

(Purnendu Singh, J)

manish/-

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

