

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49741 of 2021

Arising Out of PS. Case No.-238 Year-2021 Thana- BIDUPUR District- Vaishali

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1. Raju Kumar Singh @ Raju Singh, Son of Jugal Kishore Singh @ Jaddu Singh, Resident of Village- Chechar, P.S. Biddupur, District- Vaishali.
 2. Sanjiv Kumar Singh @ Sanjiv Kumar, Son of Harendra Singh, Resident of Village- Chechar, P.S. Biddupur, District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
For the Opposite Party/s	:	Mr. Parmeshwar Mehta, APP
For the Informant	:	Mr. Chaube Jawahar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 01-08-2022 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. Ravish Kumar, learned counsel appearing on behalf of the petitioners and the learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with Bidupur P.S. Case No. 238 of 2021 registered for the offences punishable under Sections 341, 323, 325, 376, 379/34 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act.

As per prosecution case, the victim alleged that she along with her mother went to offer worship at her old house and after worship when her mother moved ahead and she was



putting lock, in the meantime, accused persons forcefully dragged her in a poultry farm and started sexually assaulting her and torned her clothes and also tried to commit sexual assault upon her. It is also alleged that the accused persons gave tooth bite upon her cheek and on the finger of her right hand, thereafter she became unconscious, even in that unconsciousness the accused persons tried to commit rape upon her.

It is submitted by the learned counsel appearing on behalf of the petitioners that admittedly there is land dispute, which resulted into series of civil and criminal litigation between the parties, the details of which have been mentioned in para. 16 of the bail application and all the accused persons were none-else, but right from grandson to grandfather. It is further submitted that the present case is nothing but a counter blast of Bidupur P.S. case no. 237 of 2021 lodged by one of the member of the petitioner's side against the victim, her father and mother under Section 307 and other allied Sections of the Indian Penal Code and the police after investigation having found the case true, submitted charge-sheet under Section 307 of the Indian Penal Code. It is next submitted that from bare perusal of the F.I.R. it is evident that no date and time has been mentioned, as



to when this occurrence had taken place. Further the statement of the victim has been recorded under Section 164 of the Cr.P.C. wherein she has stated a contradictory statement and no accusation of rape/ sexual assault has been levelled against the petitioners and other co-accused persons, save and except the allegation that petitioner no.1 snatched her chain and petitioner no.2 took away her mobile phone. The police after investigation and considering the statement of the victim has submitted final form under Section 173 of the Cr.P.C. only under Sections 341/323/325/354/34 of the Indian Penal Code and Section 12 of the POCSO Act. It is also submitted that the victim was medically examined and her age was determined in between 17-19 years and further no evidence of sexual injuries was seen on the body of the victim. It is next submitted that now the victim has already been examined and her deposition has been recorded by the learned trial court, but surprisingly she has taken somersault and for the first time in the court she has stated that co-accused persons including petitioner no.1 committed rape upon her and the petitioner no.2 extended help in commission of rape and also assaulted. It is next submitted that previously the mother of the victim had also filed a criminal case bearing Bidupur P.S. Case No. 431 of 2018 with an



allegation of sexual assault against the accused persons, however, the police after investigation found the allegation false submitted final form showing them innocent. It is further submitted that the petitioners are in custody since 12.07.2021 and moreover there is no allegation that the petitioners have ever been indulged in tampering with the evidence and intimidating the witnesses. It is lastly submitted that one of the co-accused, namely, Arun Kumar Singh, against whom certain specific allegation has been levelled, has been granted bail by the court below itself vide order dated 22.03.2022.

On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that there is specific allegation levelled against the petitioners that they have brutally assaulted the victim and petitioner no.1 committed rape upon her. It is next submitted that on examination, the doctor found multiple injuries on different parts of the body of the victim and moreover the learned trial court having found the materials framed the charges against the petitioners under Sections 323/34, 341/34, 342/34, 504/34, 354A/34, 354B, 376D/511, 325/34 of the Indian Penal Code and Sections 6/18, 10 of the POCSO Act. It is also submitted that the trial is going on and after the deposition of the victim, the case is pending for



examination of other witnesses. It is also submitted that the petitioner no.2 has falsely stated that he is having clean antecedent, rather he is made accused in one another case. It is also submitted that one of the witness has stated that she is being threatened by the accused persons including the petitioners.

Learned APP for the State also opposes the bail application and submits that the victim has specifically stated about the role attributed by the petitioners and other accused persons and in fact she has categorically supported the prosecution case.

Having heard the rival submissions made on behalf of the parties and considering the statement of the victim comparing to the F.I.R. as well as her statement recorded under Section 164 of the Cr.P.C. and the deposition made before the trial court, there appears to be not only contradictory, but exaggeration and furthermore now examination of the victim has already been completed and only official witnesses are yet to be examined and she has never made any complaint that the petitioners are indulged in tampering with the evidence, apart from the fact that in the statement recorded under Section 164 of the Cr.P.C. she has not made any allegation of commission of



rape against any of the accused persons including the petitioner no.1 but before the trial court for the first time she made allegation of rape against four accused persons including the petitioner no.1. This Court also takes into consideration the settled proposition of law that “frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail” and further the totality of the circumstances appearing on the record of the case disclosed that the prosecutrix has strong motive to falsely implicate the persons charged, apart from the fact that the petitioners are in custody since 12.07.2021, moreover one of the accused, namely, Arun Kumar Singh, has already been granted bail by the court below itself, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Court POCSO- cum- Children Court-cum-Additional Sessions Judge-VI, Vaishali at Hajipur in connection with Bidupur P.S. Case No. 238 of 2021 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 remain physically present on each and every date of trial till disposal of the case.

(ii) They will cooperate in conclusion of the trial.

(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.

(Harish Kumar, J)

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