

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52972 of 2021

Arising Out of PS. Case No.-21 Year-2021 Thana- TRIVENIGANJ District- Supaul

NIRAJ KUMAR YADAV Son of Bindi Yadav @ Vindeshwari Prasad Yadav
Resident of Village - Jaraila, Ward No.11, Panchayat- Thalagadhiya Uttar,
P.s.- Triveniganj, Distt.- Supaul.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kumar Dharendra Pratap Singh, Advocate
For the Opposite Party/s : Mr.Sadanand Paswan, Spl. PP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

7 17-05-2022 Heard learned counsel for the petitioner and learned
Spl. P.P. for the State.

In this case notices were issued upon the Opposite Party No. 2 vide order dated 10.02.2022 and the case diary was also called for after adding him as opposite party in the bail application, though the learned counsel filed the notices on time but inadvertently could not add O.P. No. 2 as a party in the bail application as he met with an accident, accordingly vide order dated 07.03.2022, learned advocate, Neeraj Kumar was directed to add the informant as O.P. No. 2, accordingly the informant was added as O.P. No.2 on 04.03.2022 but the report of the notices was not received till 25.03.2022 as would be evident from the order dated 25.03.2022. The matter was again taken up



on 11.04.2022 and was directed to be placed on 25.04.2022 awaiting the service report, thereafter the matter was taken up on 25.04.2022 wherein it was recorded that the office report records that the notices could not be served on the newly added O.P. No. 2 as such the Office was directed to resend the notice filed by the petitioner which had returned, thereafter the matter was taken up on 16.05.2022 awaiting service report as such on the submission made by the learned counsel for the petitioner, the learned Spl. P.P. in terms of the Act was requested to intimate the informant to appear in the present case and the matter was passed over.

Learned Spl. P.P. for the State appears and submits that the notices were served upon the informant through Sub-Inspector-cum-Officer-In-Charge, Triveniganj P.S., District Supaul on 16.05.2022 but the informant showed his inability to appear in the case. Since the Court required the informant to be present to put forth his stand through his learned advocate but as the informant has shown his inability to appear as submitted, the Court is taking up the matter.

The petitioner seeks bail in a case registered for the offences punishable under Sections 376 and 506 of the Indian Penal Code read with Section 4 of the POCSO Act and Sections



3(2)(v) of the SC/ST Act.

Learned counsel for the petitioner submits that the petitioner is in custody since 30.03.2021, is a person with clean antecedent, and charges have been framed.

The informant alleges that on 23.01.2021, the victim had gone for tuition to the house of Sahdeo Ram at about 8:00-9:00 pm and while she was returning home, the victim was intercepted by the petitioner who gagged her and dragged the victim to his house and committed rape.

Learned counsel for the petitioner submits that from perusal of the allegation as alleged in the F.I.R. it would manifest that the date of occurrence is 23.01.2021 and the F.I.R. was instituted on 25.01.2021 and it is submitted that on 25.01.2021 itself the victim was medically examined. Learned counsel further submits that the victim in her statement under Sections 161 and 164 of the Cr.P.C. has supported the prosecution case, but draws the attention of the Court towards the medical report which records - hymen intact, no spermatozoa found either living or dead and also submits that no mark of violence was found on the body, but the medical report in the end of the report records that rape cannot be ruled out. The learned counsel thus submits that when the hymen was



intact, no spermatozoa found nor there was any mark of violence either external or internal on the body of the victim, then how the doctor has recorded that rape cannot be ruled out, the report itself appears to be dichotomic.

Learned counsel for the petitioner further draws the attention of the Court to paragraphs '94' and '95' of the case diary to submit that independent witnesses have stated that the petitioner and the victim were in love and the present case came to be instituted by the informant when he came to know about the same, it is thus submitted that is why the medical report does not specifically and categorically records that rape was committed. Learned counsel further submits that the petitioner is a young boy of 21 years of age, charges have been framed and in the event if he remains in custody for a longer period of time, he may come in contact of hardened criminals which may not be good for his future prospects and may jeopardise his career.

Learned Spl. P.P. for the State opposes the prayer for bail of the petitioner but very fairly submits, after going through the case diary, that the independent witnesses have stated that the petitioner and the victim were in love and as far as medical report is concerned, it is submitted that though it records, as aforesaid, but in the end it also records that rape cannot be ruled



out.

Considering the fact that the petitioner is in custody since 30.03.2021, is a young boy having clean antecedent, charge-sheet has been submitted in the case and charges have been framed, let the petitioner above named be released on bail on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with POCSO Case No. 08 of 2021 arising out of Triveniganj P.S. Case No. 21 of 2021 with a condition that one of the bailors of the petitioner shall be his father, Bindi Yadav @ Vindeshwari Prasad Yadav.

Further, if the learned court below comes to a conclusion that the petitioner after release is trying to delay the trial in any manner, the learned court below shall forthwith cancel his bail bonds after recording reasons.

The notice served on the informant by the Officer-in-Charge, Triveniganj P.S. is kept on record.

(Satyavrat Verma, J)

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