

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57501 of 2021

Arising Out of PS. Case No.-439 Year-2021 Thana- HAJIPUR SADAR District- Vaishali

1. Ratnesh Kumar, S/o Sri Amod Rai, R/O Village- Akilabad, P.S- Hajipur Sadar, District- Vaishali.
2. Santosh Kumar, S/O Mr. Vinod Rai, R/O Village- Akilabad, P.S- Hajipur Sadar, District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Opposite Party/s	:	Mr. Nitya Nand Tiwary, APP
For the Informant	:	Mr. Ravish Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 20-09-2022 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. Ritwik Thakur, learned counsel for the petitioners, Mr. Ravish Mishra, learned counsel for the informant and learned APP for the State.

The petitioners seeks regular bail, who are in custody in connection with Sadar P.S. Case No. 439 of 2021 registered for the offences punishable under Sections 365/34 of the Indian Penal Code. Subsequently Sections 363, 366, 354(A) of the Indian Penal Code and Section 8 of the POCSO Act were added.



As per prosecution case, it is alleged that on 02.05.2021, at about 10:30 PM, while the informant was at Hajipur, his co-villager, Ratnesh Kumar (petitioner no.1), telephonically informed him that he has kidnapped his daughter (X), thereupon the informant went to his house and enquired the matter, whereupon the brother of Ratnesh, namely Ritesh and his father Amod Rai as well as Ritesh, Amod, wife of Amod and his son Santosh Kumar and Antosh Kumar started abusing and told him that they have kidnapped his daughter and whatever he wants to do, he can do.

Learned counsel appearing on behalf of the petitioners submits that from the F.I.R., it would be evident that petitioner no. 2 Santosh Kumar was already present in his house and, as such, it is evident to the extent that the petitioner no. 2 was not involved in the crime, hence the prosecution case falls to the ground. He next submits that during the course of investigation, the victim was recovered and thereafter her statement was recorded under Section 164 Cr.P.C. wherein she has categorically stated that the petitioners along with their friends have kidnapped her and thereafter she was taken to some another place where all of them have committed wrongful act, however, she has categorically stated that in the night petitioner



no.1 forbade to do any wrongful act with her and it is petitioner no. 1 who had brought her police station and left there. He next submits that the deposition of the victim was recorded, wherein exaggeration has been made and she has stated a different version that all the accused persons, including the petitioners, have committed wrongful act and also brutally assaulted her. In her deposition, she also stated that they had also made a video of the wrongful act and threatened that if she will not withdraw the earlier case, the same would be made viral, but the same has not been recovered. He next submits that from all the three documents i.e. F.I.R., the statement recorded under Section 164 Cr.P.C. as well as the deposition recorded in trial, various contradictions have been made by the victim, apart from the fact that the medical report does not support the prosecution case of commission of rape. Learned counsel has drawn the attention of this Court towards Annexure- 3, which is a discharge summary showing that on the date of occurrence the petitioner no. 2 was admitted in a Nursing home on account of suffering from dengue. He next submits that there are prior animosity, which resulted into lodging of the F.I.R. He lastly submits that the petitioners are in custody since 05.05.2021 and 23.06.2021 respectively.



On the other hand, learned counsel for the informant vehemently opposes the bail application and submits that prior to institution of this case, the uncle of the victim lodged Hajipur Sadar P.S. Case No. 438 of 2021 on 02.05.2021 itself at about 20:15 and soon after the institution of this case, the victim was forcibly kidnapped by all the accused persons and she was subjected to rape and assault at the hands of the accused persons including the petitioners. He next submits that from the statement recorded under Section 164 of the Cr.P.C. as well as deposition of the victim recorded in course of trial, it transpire that she specifically stated that these petitioners have committed rape upon her on the point of pistol and also assaulted her and threatened that her family members would be eliminated, if the earlier F.I.R. would not be withdrawn.

Learned counsel for the State also opposes the bail application and submits that the victim has supported the prosecution case and the specific allegation has been leveled against the these two petitioners.

Regard being had to the submissions made on behalf of the parties and considering the specific nature of accusation and the materials available on record, specially the statement of the victim recorded under Section 164 of the Cr.P.C. as well as



her deposition, this Court is not persuaded to enlarge the petitioners on bail.

Accordingly, the bail application of the petitioners stands dismissed.

However, it is expected that the learned trial Court will take all necessary measures to conclude the trial as early as possible.

(Harish Kumar, J)

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