

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.64009 of 2021**

Arising Out of PS. Case No.-22 Year-2021 Thana- MAHILA P.S. District- Siwan

MADHAV GUPTA @ MADHAV KUMAR GUPTA Son of Ramnath Kanu  
Resident of Village - Chit Bisraon, P.S.- Guthani, District - Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Ramadhar Shekhar, Advocate  
For the Opposite Party/s : Mr. Umanath Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA  
ORAL ORDER**

4      10-10-2022                      Heard learned counsel for the petitioner and learned  
A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Section 376(DA) of the Indian Penal Code and Section 4/6 of POCSO Act.

Learned counsel for the petitioner submits that petitioner is a person with clean antecedent and is a young boy of 20 years of age and the informant alleges that she from her mobile no. 7319963045 called on petitioner's mobile no. 8899099956, it is further alleged that thereafter the petitioner said that he has come to her village and is standing in an orchard near her house and requested her to meet, on which the informant showed her reluctance to meet but the petitioner insisted and asked her to come alone even for five minutes and thereafter to go back, it is



next alleged that trusting the petitioner, the informant went to the orchard where she saw the petitioner was standing with a motorcycle and thereafter it is alleged that on seeing the informant the petitioner caught her and dashed her on the ground and after disrobing her, committed rape, it is further alleged that in the meantime Mannu Gond, Sujit Rajbhar, Teju Rajbhar, Ramsnehi Rajbhar and Kalindar @ Guddu came and thereafter they also committed rape on which the informant started screaming and crying but they threatened that if she discloses the occurrence to anyone she will be killed. It is next alleged that thereafter on account of fear, she did not disclose the occurrence to her family members after coming back, but after four days she gathered courage and disclosed the occurrence to her parents then the present FIR came to be instituted.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case, it is next submitted that it absolutely does not stand to reason that had the informant been raped in the manner as alleged in the FIR then whether she would have been in a position to walk back home, it is also submitted that if what is alleged is true then the act was really barbaric but then the conduct of the informant does not inspire confidence for the reason that if such a heinous offence is committed, it is just not possible for the family members not to



realize that what has happened to the victim, it is also submitted that in order to implicate the petitioner falsely, a plea of fear has been taken that is out of fear the FIR was not instituted promptly. Learned counsel next submits that the police during the course of investigation at Para-9 of the case diary, recorded the statement of the mother of the informant wherein she has stated that on 06.04.2021 when she woke up she found the informant missing, thereafter she came back on 08.04.2021 and was feeling afraid and on asking she disclosed about the occurrence, the learned counsel next submits that even the further statement of the informant that she left her home and went somewhere and thereafter came back on 08.04.2021 also does not inspire any confidence as she does not disclose that where she went, it is also submitted that the informant stated that the place of occurrence was an orchard and a field but then the place of occurrence as alleged in the FIR is an orchard and not a field which also creates doubt. Learned counsel further submits that the injury report does not even remotely suggest that such a heinous and a barbaric act was committed with the informant as the injury report does not even whisper, that any external injury was found on the body of the informant nor it corroborates rape as it has come in Para-17 of the case diary. Learned counsel further submits that thus it absolutely does not stand to reason



that if what has been alleged in the FIR is true then why the injury report negates the same. It is next submitted that the date of occurrence is 04.04.2021, on 05.04.2021 the victim was at home but she did not disclose the occurrence to anyone, further the statement of her mother was recorded in which she has stated that on 06.04.2021, the victim was found missing in the night and she came back on 08.04.2021 this also amply demonstrates that the victim either by way of afterthought or under pressure has tried to falsely implicate the petitioner, it is also submitted that if the victim could disclose the occurrence to her parents three days after the occurrence then why the same could not have been disclosed on 05.04.2021 itself. Learned counsel for the petitioner next submits that the police investigates such cases in a mechanical manner, it is also submitted that no technical investigation was carried out with regard to the call details to establish whether the petitioner was present at the place of occurrence on the alleged date or not when the informant alleges that she had talked with him, it is also submitted that when the injury report negates gang rape, was it not the duty of the police to investigate the case more threadbare in order to arrive at the truth. Learned counsel draws the attention of the Court to the counter-affidavit filed on behalf



of the Superintendent of Police, Siwan to submit that how mechanical an investigation could be, it is submitted that from perusal of Annexure-A, it would manifest that the informant was tested Covid positive on 09.04.2021, but then on the same day the FIR came to be instituted and her medical was also done, it is submitted that if she was Covid positive then the doctors ought to have advised her to remain in isolation and definitely would not have conducted the medical test, it is also submitted that the document appears to be doubtful as a person who is Covid positive the same is not testified by way of a certificate rather a proper report is required which further goes to demonstrate that the informant somehow or the other was trying to falsely implicate the petitioner. Learned counsel for the petitioner, at the cost of repetition submits that the injury report does not even remotely suggest rape/gang rape.

Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner but is not able to meet the submission of the learned counsel for the petitioner that the injury report does not corroborate the allegation of rape and also the submission made with regard to the informant of being tested Covid positive.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event



of his arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Mahilla P.S. Case No. 22 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

**(Satyavrat Verma, J)**

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