

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64941 of 2021

Arising Out of PS. Case No.-12 Year-2021 Thana- MAHILA PS District- Aurangabad

1. SUJIT CHAUHAN @ SUJIT KUMAR, Son of Sudarshan Chauhan
2. Saroj Kumar @ Saroja Kumar @ Gutheliya Son of Nagdev Vishwakarma
3. Arvind Singh @ Babu @ Arvind Kumar Son of Late Vindheshwari Singh
All Residents of Village - Jamhariya, P.S. - Deo, District - Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Avanish Kumar Singh, Advocate
For the Opposite Party/s :	Mr. Chandra Bhushan Prasad, A.P.P.
	Mr. Santosh Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 09-11-2022 Heard learned counsel for the petitioners, learned
counsel for the informant and learned A.P.P. for the State.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioners apprehend their arrest in a case
registered for the offences punishable under Section 376(D) of
the Indian Penal Code and Section 6 of the POCSO, Act.

In compliance of the order dated 22.08.2022, the
Superintendent of Police, Aurangabad along with the I.O. of the
case, the Civil Surgeon, Aurangabad and the Doctors are
physically present in Court.

A counter affidavit has been filed on behalf of the
Superintendent of Police, Aurangabad which is on record.



Learned counsel for the petitioners submits that petitioners are persons with clean antecedent and are young boys in the age group of 20-24 years and they have been falsely implicated in a case of gang rape.

The informant alleges that one Vishal Chandravanshi called the victim/informant by phone and asked her to come and meet him in the night on 13.05.2021 and when the victim reached the agricultural field to meet him, it is alleged that Vishal Chandravanshi committed sexual intercourse with her. Thereafter, his three friends, namely, Sujit Chouhan, Arvind Singh @ Babu and Saroj Kumar @ Gutheliya came on the spot and forcefully raped her.

Learned counsel for the petitioners submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that on the face of it, the case appears to be very serious and heinous, but it is a question of life of three young men. Learned counsel, thus, submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant herself alleges that Vishal Chandravanshi called her to meet him and she willingly obliged and went to the field where she alleges that Vishal Chandravanshi committed rape upon her in the night. It is also submitted that it absolutely does



not stand to reason that as to why the informant on mere calling of Vishal Chandravanshi went to meet him in the night and that too, in an agricultural field all alone, this amply demonstrates that Vishal Chandravanshi and the informant were known to each other and were in love. It is further submitted that while the informant and Vishal Chandravanshi were indulging in physical relation these petitioners being co-villagers also came and when they saw the informant and Vishal Chandravanshi indulging in physical intimacy, they rebuked the informant as well as Vishal Chandravanshi. It is next submitted that to falsely implicate the petitioners, the present false case came to be instituted. It is also submitted that the informant was medically examined by a Medical Board set up to find out whether she was a victim of collective rape or not, whether there were any injury on her body and also to assess her age. Learned counsel further submits that Medical Board opined that no injury or abrasion was seen on the body, labia majora and labia minora were intact, hymen was ruptured (old), no anal injury, no urethral injury could be found. The Medical Board assessed the age of the victim in between 17-18 years. Learned counsel next submits that pathological swab clearly mentioned that no spermatozoa was found in either of the swab. Further, on basis



of gynecological examination, it was opined that there was no abrasion or injury present. The girl was sexually active, but the sexual assault cannot be denied. Learned counsel also submits that it absolutely defies all logic, wisdom and reasonable medical behaviour that when the Medical Board has clearly recorded that no injury was found on the informant then on what basis it records that sexual assault cannot be denied, this appears to be dichotomic. Learned counsel further submits that when the victim came to her house, brother of the victim video-graphed the questions being put to her whether these petitioners molested or sexually abused her to which her answer was categorically no. It is next submitted that even the said compact disc (CD) was handed over to the police as has been specifically pleaded at para 11 of the anticipatory bail application, but, the police in a mechanical manner investigated the case without investigating authenticity of the C.D. Learned counsel also submits that had it been a case of gang rape, then definitely the victim would not have been in a position to walk back home. Learned counsel further submits that when the Medical Board is negating the occurrence, then on what basis it can be believed that these petitioners committed rape upon the informant merely because the informant in her statement under Sections 161 and



164 Cr.P.C. has supported the prosecution under parental pressure.

Learned A.P.P. for the State submits that a counter affidavit has been filed. Learned A.P.P. and the learned counsel for the informant rebuts the submission of the learned counsel for the petitioners. Learned A.P.P. submits that he has specifically pleaded in his counter affidavit that the victim in her statement under Sections 161 and 164 Cr.P.C. has supported the prosecution case. It is further submitted that even the Medical Board has opined that sexual assault cannot be denied. Learned counsel for the informant next submits that the alleged video which was handed over to the police was not created by the brother of the informant but by one Sandip Chandravanshi. It is also submitted that on the date of occurrence, the informant was a minor and she has supported the prosecution case.

Learned counsel for the petitioners rebuts the submission of the learned counsel for the informant and the learned A.P.P. and submits that they are not in a position to rebut his submission with respect to the issues raised aforesaid.

The Doctor, who had conducted the physical examination of the victim, is also present along with the Civil Surgeon, Aurangabad. The Doctor has categorically stated that it



was a slip of pen. It is further submitted that instead of opining sexual assault cannot be denied, it should have been sexual assault cannot be ascertained. It is also submitted that the act was not deliberate but because of inexperience as a Doctor in handling such cases.

The I.O. of the case, who is also present, has categorically submitted that she had met the victim and had inquired about the authenticity of the video clip to which the victim very clearly stated that it is her video and did not dispute the authenticity of the video, further the I.O. very fairly submitted that the victim in the video has not alleged rape though has said that she was threatened.

The Superintendent of Police, Aurangabad also very fairly submits after going through the entire case records and examining the issues threadbare that he does not oppose the anticipatory bail application of the petitioners.

Considering the submissions made by the learned counsel for the petitioners and also taking into consideration the submissions made by the Superintendent of Police, Aurangabad Doctor, and the Investigating Officer, the petitioners above-named, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, be



released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) each 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 Mahila Thana (Aurangabad) P.S. Case No. 12 of 2021, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

The personal appearance of the Superintendent of Police, Aurangabad, the I.O. of the case, the Civil Surgeon, Aurangabad and the Doctors is dispensed with.

(Satyavrat Verma, J)

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