

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65074 of 2021**

Arising Out of PS. Case No.-109 Year-2021 Thana- BAHERI District- Darbhanga

Md. Ali Raja S/O Md. Zakir R/O Village- Bhachhi, P.S.- Baheri, District-
Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nirbhay Prashant, Advocate
For the State : Mr. Yogendra Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

3 30-06-2022 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

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

The petitioner seeks bail in connection with Baheri
P.S. Case No. 109 of 2021 registered for the offence under
Sections 376, 313, 34, 504 and 506 of the Indian Penal Code
and Sections 4 and 6 of the POCSO Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 01.08.2021.

The allegation against the petitioner is to commit rape
upon the victim, who is a minor, and also to cause miscarriage
without consent. The victim is the daughter of the informant,
aged about 13 years. The occurrence is alleged to be taken place



in coaching institute of the petitioner, where the victim was a student.

Learned counsel appearing on behalf of the petitioner submitted that none of the ingredients, as specified to constitute the offence, is made out as alleged in the present F.I.R.. It has further been submitted that the statement of victim recorded under Section 161 *qua* Section 164 of Cr.P.C. is contradictory. While traveling over the argument, it has been submitted that the present occurrence is founder over previous dispute, as one of the minor, belongs to the family of petitioner, was kidnapped by the relatives of the informant. It has also been submitted that the medical report is not suggesting the allegations, as alleged against the petitioner. While concluding the argument it has further been submitted that the petitioner is a man of clean antecedents and moreover chargesheet has already been submitted, as such, there is no chance of tampering of evidence.

Learned APP appearing on behalf of the State while opposing the prayer of bail submitted that there is specific allegation, as regard to penetrative sexual assault/rape and also of miscarriage, against the petitioner. It has further been submitted that victim, who is a minor, specifically stated in her statement, recorded under Section 164 of Cr.P.C., against the



petitioner as regard to alleged offence. It has also been submitted that the absence of any injury on the private part of the victim does not lead to a conclusion, *ipso facto*, that rape was not committed for the reason that rape is a legal finding not a medical one.

Considering the facts and circumstances as mentioned above, as there is specific allegation against the petitioner to commit rape upon the minor victim, which is duly supported through her statement recorded under Section 164 of Cr.P.C., this Court is not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected, at present, with the liberty to the petitioner to renew his prayer for bail after 9 months, if the trial is not concluded in the stipulated period of time.

In the meantime, Superintendent of Police, Darbhanga is directed to produce chargesheeted witnesses before the Trial Court as and when directed by the Trial Court for expeditious disposal of the trial.

(Chandra Shekhar Jha, J)

Ankit/-
Shashank/-

U		T	
---	--	---	--

