

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67805 of 2021

Arising Out of PS. Case No.-188 Year-2021 Thana- BRAHMPURA District- Muzaffarpur

Vishal Kumar, Son of Jitendra Jha, Resident of Village - Kolhua
paigambarpur Jagdamba Nagar, P.s.- Ahiyapur, Dsitt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Vaishnavi Singh, Advocate
For the Opposite Party/s : Mr. Ram Sumiran Rai, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 19-09-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with Brahmpura P.S. Case No. 188 of 2021 registered for the alleged offences under Sections 376, 354(B), 366, 120(B) and 354(c)/34 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act.

As per prosecution case, the petitioner along with his co-accused brother forcibly took the daughter of the informant to their house and this petitioner raped her and made a video of that act. Later on, the parents of the petitioner agreed to marry



the daughter of the informant with the petitioner and a paper was prepared to this effect. After sometime, the daughter of the informant went missing and the informant came to know the fact that she was concealed by the petitioner and his co-accused brother. She went to the place, when her daughter was kept, with her younger daughter aged about 12 years. She found her daughter tied and she further told the informant that she was raped by the petitioner and his co-accused brother, who ran away on reaching of witnesses at that place. Meanwhile, they also threatened to rape the younger daughter of the informant.

The learned counsel for the petitioner submits that no occurrence as alleged has ever taken place. The petitioner has been falsely implicated in this case. The petitioner was being blackmailed by the informant and his signature was forcibly taken on a paper giving him threat of life. There will be no application of any of the provisions of POCSO Act as admittedly, the petitioner is aged about 19 years. Allegations against younger daughter of the informant is vague and have been made only to make out a case under POCSO Act. Learned counsel further submits that an occurrence which started from 02.01.2021 and continued till 24.05.2021, complaint was filed only on 03.07.2021 and there is no explanation for the same and



it is also strange that neither the complainant nor the victim girl has filed any information before the police. It is also not believable that if the victim was forcibly taken away by the petitioner and other co-accused, she would not make any noise or shout or raise any alarm. During investigation, no electronic evidence has been found, though allegation have been made in the FIR. Even the witnesses examined during investigation have not supported the prosecution case and have stated that the informant and her daughter are to be blamed and this fact has been supported by the father-in-law of the informant who also stated that the victim girl used to flee away from her house and once she ran away from her house and became pregnant and no rape was committed with her. Same statement was given by the brother-in-law of the informant. The statement of the younger sister of the victim was recorded and she stated that she along with her mother went to the house of the petitioner, where the petitioner and her elder sister were found but they were alone. From the statement recorded by the victim she was with the petitioner for 20 days. In medical examination no evidence of any assault or violence was found on the body of the victim. The whole case has been lodged in order to pressurize the petitioner to perform the marriage with the daughter of the informant and



for this reason all the false allegation have been levelled. Since the petitioner has refused to marry the daughter of the informant he has been falsely implicated in this case. The petitioner is in custody since 05.08.2021 and charge-sheet has been submitted.

Learned APP opposes the prayer for bail submitting that the informant has made specific allegation against the petitioner and his co-accused brother. However, learned APP concides that witnesses in paragraph 21, 22 and 23 have not supported the prosecution case and commented about the character of the informant and the victim.

Perused the records.

Having regard to the facts and circumstances and submission made on behalf of the parties and further considering the possibility of false implication from the facts as brought on record and further considering the statement of the informant bordering on the improbability of prosecution case and also considering the period of custody, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned VIth Additional Sessions Judge-cum-Special Judge, POCSO, Muzaffarpur in connection with Brahmpura P.S. Case No. 188 of 2021, subject



to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

(i) The bail bond of the petitioner will be accepted only after framing of charge, if not already framed.

(ii) One of the bailors will be Kunal Kumar, brother of the petitioner, who has sworn the affidavit in this case.

(iii) The petitioner will remain present on each and every date fixed by the court below.

(iv) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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