

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70007 of 2021**

Arising Out of PS. Case No.-20 Year-2019 Thana- BHANGWANPUR HAT District- Siwan

Prakash Tiwari Son of Bhupendra Tiwari @ Dhupendra Tiwari Resident of
Village - Gopalpur, P.s.- Bhagwanpur Hat , Distt.- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Harsh Anuj, Advocate
For the State	:	Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 28-11-2022 Heard learned counsel appearing on behalf of the
petitioner and learned APP 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
Bhagwanpur Hat P.S. Case No.20 of 2019 registered for the



offence under Sections 366(A) and 34 Indian Penal Code and Sections 3 and 4 of the POCSO Act.

The accused/petitioner is named in the F.I.R. and is in custody since 23.06.2021

The allegation against the petitioner is to kidnap the minor daughter of the informant, aged about 15 years, for the purpose of illicit intercourse.

Learned counsel appearing on behalf of the petitioner submitted that present F.I.R. was lodged after delay of 20 days without having any just explanations. It is also submitted that the matter is related to love affair between victim and co-accused, namely, Abhimanu Kumar. It is submitted that the victim returned on her own after one year of the occurrence. It is further submitted, nothing surfaced, during the course of medical examination of the victim, which may suggest that rape was committed upon her. It is also submitted that as per medical report, age of the victim appears to be 19 to 20 years, and just to implicate falsely, the case has been registered under the POCSO Act. While concluding the argument, it is submitted that investigation in this case is complete for which chargesheet has been submitted, as such, there is no chance of tampering with the evidence.



Learned APP appearing on behalf of the State, while opposing the prayer of bail, submitted that gang-rape was committed upon victim, after kidnapping by this petitioner, alongwith other co-accused persons. It is submitted that as per statement of the victim as recorded under Section 164 of the Cr.P.C, there is specific allegation against the petitioner to commit rape upon victim, alongwith other co-accused persons. It is also submitted that rape is a legal finding, not a medical one, and as such, non-finding of injuries does not lead to conclusion, *Ipso-facto*, that rape was not committed upon.

In view of the facts and circumstances, as mentioned above, as there is specific allegation of rape against this petitioner, after kidnapping alongwith co-accused persons, this Court is not inclined to grant privilege of bail to the petitioner, at present.

The learned Trial Court/Special Court is directed to proceed with the matter, by taking it on board, on day-to-day basis, so as trial may conclude within specified time as prescribed under Section 35(2) of the POCSO Act, 2012, failing which the petitioner may renew the prayer of bail, if so advised.

The Superintendent of Police, Siwan is directed to produce the charge-sheeted witnesses, as and when directed by



the learned Trial Court, so as to conclude the trial within
aforesaid time period, as prescribed under law.

(Chandra Shekhar Jha, J)

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