

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3566 of 2023**

Arising Out of PS. Case No.-326 Year-2022 Thana- WARISLIGANJ District- Nawada

Himanshu Kumar Son Of Ramesh Mahto R/V- Bhatta, P.S.- Kashichak,
District- Nawada

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashank Kumar Singh, Advocate

For the Opposite Party/s : Ms. Renu Kumari, APP

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

3 22-06-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

The petitioner seeks bail in connection with
Warisaliganj P.S. Case No.326 of 2022 registered for the offence
under Section 376-D of the Indian Penal Code.

The accused/petitioner is named in the F.I.R. and is in
custody since 28.10.2022.

The allegation against the petitioner is to commit
gang rape upon informant/victim on five different occasions
between 15.10.2016 to 26.01.2017. It is further alleged that a
document was created in Bihar Sharif Court, suggesting



solemnization of marriage between the parties to cover up the occurrence. It is also alleged that the video of occurrence was recorded by petitioner and other co-accused persons, where on threat to get the same viral to the society victim was again called to establish physical relation after five years of the occurrence, reason to lodge the present F.I.R.

Learned counsel appearing on behalf of the petitioner submitted that from the narration of the F.I.R. itself, it appears that document was created regarding solemnization of marriage, which was duly signed by the informant/victim, which later on claimed to be obtained under pressure. It is also submitted that alleged occurrence is of year 2016-17 and after five years of the occurrence the present F.I.R. was lodged, when petitioner got employed with Indian Army. It is submitted that even the medical report of the victim is not supporting the allegation. Learned counsel further submitted that as marriage between the parties could not be negotiated for certain reasons, present false allegation was raised. It is highly improbable that named two accused persons including this petitioner, who are none but brother-in-law to commit the present crime together particularly in Indian social context. While travelling over the argument, learned counsel relied upon the report of the Hon'ble Supreme



Court in the case of ***Sonu @ Subhash Kumar v. State of Uttar Pradesh*** reported in ***2021(3) BLJ, SC 171***. While concluding the argument, it is submitted that petitioner is a man of clean antecedent and moreover, investigation of this case has been completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State, while opposing the prayer for bail submitted that allegation of gang rape is specific against this petitioner, which is duly supported by victim while recording her statement under Section 164 of the Cr.P.C. While opposing the prayer for bail learned APP fairly conceded that present F.I.R. was lodged after five years of the occurrence.

In view of the facts and circumstances as mentioned above as present implication, *prima facie*, arises out of failed negotiation of marriage, where F.I.R. was lodged after five years of the occurrence coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 28.10.2022, let above named petitioner is directed to be released on bail in connection with Warisaliganj P.S. Case No.326 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the



satisfaction of learned Additional Chief Judicial Magistrate-IV-cum-Special Court (POCSO Act), Nawada/concerned court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C. with further conditions:-

(i) That petitioner shall not interact with victim/informant during the pendency of the trial in any manner or to influence any prosecution witness, failing which, the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly



supported by the documents.

(iii) That one of the bailors
shall be deponent of the present bail
petition.

(Chandra Shekhar Jha, J.)

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