

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.19831 of 2022**

Arising Out of PS. Case No.-124 Year-2021 Thana- BISHWAMBHARPUR District-  
Gopalganj

=====

HARI RAI S/o Lalan Rai R/o village- Galimpur, P.S.- Vishambharpur,  
District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr.Baidya Nath Thakur  
For the Opposite Party/s : Mr.Mukeshwar Dayal

=====

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL ORDER**

3      03-01-2023              Heard the learned counsel for the petitioner  
and the learned APP for the State.

The petitioner seeks regular bail in connection with Vishambharpur P.S. Case No. 124/2021, registered for the offence punishable under Sections 366-A, 376(3) of the Indian Penal Code and Sections 4, 6, 7, 8 of the POCSO Act.

The case of the prosecution, in brief, according to the informant is that on 10.10.2021 at about 4:00 am. in the morning, his daughter, aged about 11 years, had gone out to attend the call of nature, however, when she did not return, the informant started searching for her, but she



was traceless. It is the further case of the prosecution that on 12.10.2021 at about 10:30 pm., the informant heard noise, whereafter he came inside his house and saw that his daughter was crying and on enquiry, she told that when she had gone out to attend the call of nature, the accused persons, namely, Om Rai and Roshan Singh, had tied her mouth and had locked her in a room, whereafter the petitioner had arrived there and raped her.

The learned counsel for the petitioner has submitted that the petitioner is innocent, he has been falsely implicated in the present case, he is having a clean antecedent and he is languishing in custody since 14.10.2021. The learned counsel for the petitioner has further submitted that one of the co-accused person, namely, Om Rai, has already been granted the privilege of anticipatory bail by a coordinate Bench of this Court, vide order dated 14.12.2022, passed in Criminal Miscellaneous No. 44369 of 2022. The learned counsel for the petitioner has further



submitted that there is no evidence of rape as is apparent from the medical report and moreover, on account of existing land dispute, the petitioner has been falsely implicated in the present case.

Per contra, the learned APP for the State has referred to the case diary and has submitted, by referring to the statement made by the victim girl under Section 164 Cr.P.C. before the learned Magistrate, that the victim girl has fully supported the factum of the petitioner having raped her and as far as the medical report is concerned, which is dated 13.10.2021, although the incident had taken place in the morning of 10.10.2021, the same also corroborates the incident, inasmuch as the hymen has been found to be not intact, apart from there being sufficient materials in the case diary to show the complicity of the petitioner in the alleged occurrence. It is further submitted that the order dated 14.12.2022, passed by a coordinate Bench of this Court, being referred to by the learned



counsel for the petitioner, is distinguishable, inasmuch as firstly, the allegation of rape is against the petitioner and not against Om Rai, who is the petitioner of the case in which the aforesaid order dated 14.12.2022 has been passed and secondly, the said order dated 14.12.2022 has been passed without taking into account the materials available in the case diary.

At this juncture, the learned counsel for the informant has submitted that the trial is on the verge of completion, inasmuch as all the prosecution witnesses have been examined.

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the petitioner and taking into account the materials available on record as also considering the materials available in the case diary, apart from taking into account the aforesaid submissions made by the learned APP for the State, by referring to the materials available in the case diary, prima facie, this Court finds that the



petitioner is having complicity in the alleged occurrence as also there are ample materials to suggest that he had committed heinous crime of rape with the victim girl, thus, I do not find any merit in the present petition.

Accordingly, the present petition stands dismissed.

**(Mohit Kumar Shah, J)**

Ajay/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

