

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23145 of 2022**

Arising Out of PS. Case No.-43 Year-2021 Thana- PARBATTa District- Bhagalpur

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DHARMA KUMAR @ DHARAM KUMAR @ DHARAMBIR KUMAR
Son of Prakash Yadav Resident of Village - Goraiya Colony, P.S.- Prabatta,
Distt.- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Subhash Kumar Jha

For the Opposite Party/s : Mr.A.G

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

3 04-01-2023 Heard the learned counsel for the petitioner
and the learned APP for the State.

The petitioner seeks regular bail in connection with Prabatta P.S. Case No. 43 of 2021, corresponding to POCSO Case No. 42 of 2021/ Special Case (Children) No. 16 of 2021, registered for the offence punishable under Sections 376(3) of the Indian Penal Code, Section 4 of the POCSO Act and Sections 3(1)(R), 3(2)(V) of the SC and ST Act.

The case of the prosecution, in brief, according to the informant / victim girl, is that on 6.4.2021 at about 3:00 pm. while she had gone



for plucking fruits behind her house and had plucked shahtoot from the tree and was eating the fruits, the petitioner had arrived there and caught her hand, whereupon he had taken her into the corn field of one Rajo Mandal, where the petitioner had raped her. It is further stated by the informant that thereafter, the petitioner had fled away and while she was returning, carrying her clothes, her sister met her on the way and took her home.

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 12.4.2021. The learned counsel for the petitioner has further submitted that no sign of rape has been found upon the body of the victim by the Doctor, who has conducted her medical examination. It is also submitted that the statement of the victim girl made under Section 164 Cr.P.C. is tutored.

Per contra, the learned APP for the State, by



referring to the case diary, has submitted that a bare perusal of the statement made by the victim girl under Section 164 Cr.P.C. before the learned Magistrate would show that the complicity of the petitioner in the alleged occurrence is apparent, inasmuch as he is stated to have raped the victim girl. It is also submitted, by referring to the medical report, that the victim girl is a minor and the FSL report, pertaining to the clothes of the victim girl, shows presence of blood and semen, hence, the complicity of the petitioner in the alleged occurrence is writ large from the records. The learned APP for the State has further submitted, by referring to the Social Investigation Report of the petitioner that the child is indisciplined, has left studies long back, is a paper vendor, is of quarrelsome nature and is a loafer, who roams about here and there in his free time. It is also submitted that the family members of the petitioner are also of quarrelsome nature and the Counsellor (Observation Home), Bhagalpur, has come to a



conclusion that the petitioner is healthy and his mental faculties are developed. As far as the recommendation in the Social Investigation Report is concerned, it has been recommended that the counselling of the petitioner and his family member be carried out to prevent the petitioner from committing such type of heinous occurrence in future.

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 on record as also considering the materials available in the case diary, this Court finds that not only the victim girl has corroborated the factum of rape, committed by the petitioner with her, in her statement made under Section 164 Cr.P.C. before the learned Magistrate, but the said occurrence also stands corroborated from the report of the Forensic Science Laboratory, Bhagalpur, dated 30.6.2021, hence, considering the opinion of the learned Special Judge (Children), Bhagalpur, as contained



in the impugned order, to the effect that the petitioner is required to be tried like an adult and as per Social Investigation Report, the behavior of the petitioner has been found to be indisciplined, he is having bad company, the members of his family are not having good instinct and are quarrelsome in nature and are having fighting mentality, as such release of the petitioner on bail may bring him again in association of bad elements of society as also the petitioner is likely to land into troubled waters and commit some other offence and ruin his future prospect as also there is likelihood of him coming into physical and psychological danger, I do not find any justification for granting bail to the petitioner, thus, the present petition stands dismissed.

(Mohit Kumar Shah, J)

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