

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27349 of 2022

Arising Out of PS. Case No.-180 Year-2019 Thana- RAMPUR District- Gaya

CHINTU KUMAR @ MANTU KUMAR S/o Barhan Das @ Sanjay Das
Resident of Village- Chakand, P.S.- Chakand and District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No 2, Advocate

For the Opposite Party/s : Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 04-01-2023 Heard Mr. Manish Kumar, the learned Advocate for

the petitioner and Mr. Lalan Kumar for the State.

The prayer for bail of the petitioner was earlier
rejected vide orders dated 19.03.2020 and 22.12.2021.

The petitioner is in custody since 14.06.2019.

The petitioner is being tried for the offences under
Section 376, 302 of the Indian Penal Code and Section 6/8
of the POCSO Act of 2012 in connection with POCSO Case
No. 54 of 2019, arising out of Rampur P.S. Case No. 180 of
2019.

The F.I.R. has been lodged by the father of the
deceased who has alleged that when he and his wife had



come back home from outside, they woke up their daughter (deceased) who was sleeping and she disclosed that the petitioner had raped her. The deceased was not in a good shape of health and, therefore, she was taken to a Doctor. On way back from the Doctors' clinic, the deceased died.

The learned counsel for the petitioner has submitted that the post-mortem report only discloses that the deceased died of strangulation as there were signs of asphyxia. Nonetheless, the report also corroborated the fact that the deceased was subjected to forceful sexual intercourse.

Considering the statement said to have been made by the victim before her father who had lodged the case, the prayer for bail of the petitioner was rejected for the first time as noted above on 19.03.2020.

Thereafter again this Court did not grant bail to the petitioner notwithstanding the submission of the learned counsel for the petitioner that all the witnesses who had been examined by that time had not supported the prosecution version and had become hostile.



However, since some of the witnesses were left to be examined, this Court did not grant bail to the petitioner but directed the Trial Court to conclude the trial positively within a further period of three months, failing which it was left open to the petitioner to approach the Trial Court and the Trial Court in that instance was required to record the reasons for non-conclusion of the trial even when most of the witnesses had been examined and they had not supported the prosecution version.

The petitioner again moved before the Trial Court but the application was rejected on 30.03.2022 indicating that incomplete F.S.L. report was on record and therefore, the Court had issued letter to the Forensic Laboratory, Patna on three dates to send the complete report. A show-cause notice also was issued to the Director of F.S.L, Patna because of the non-compliance of the order.

Later, the Trial Court was made to understand that the blood sample collected from the accused was destroyed because the I.O. had not followed the procedure regarding collection and preservation of samples.



The Trial Court had, under that circumstance, directed for collecting blood sample from the accused and had asked the F.S.L, Patna to report on the point whether DNA of the semen and blood detected on the clothes of the victim matched the DNA of the petitioner.

The report actually had detected presence of semen on the leggings of the victim but there is no report till date whether the DNA of the semen sample matched with that of the deceased.

Be that as it may, most of the witnesses including the father of the deceased, who is the informant of this case, has not supported the prosecution version. The learned counsel for the petitioner has drawn the attention of this Court to the evidence of the father of the victim who has deposed that the petitioner was not involved in either raping or killing the deceased.

Otherwise also, it appears that the deceased had not been murdered at home for the reason that she was taken by her father (informant) to the Doctor and on way back home, she died.



This indicates that either the averments made in the First Information Report is incorrect or the accusation against the petitioner is incorrect.

When did the murder take place, who strangled the deceased and when was she raped, remained a mystery.

On these set of facts, if seen in the background of all the witnesses not supporting the prosecution version, the petitioner, it has been urged, deserves to be bailed out with any condition that this Court may like to impose.

This Court had asked for a report from the Court below about the stage of the case afresh when it was reported that one Sub-Inspector *viz.* Nageshwar Paswan, who was the investigating officer of this case had not been examined till the date of sending of the report.

In any view of the matter, if the F.S.L. report is to come for the assessment of the Trial Court, it will take some more time.

Under the aforesaid circumstances, taking into account the period of custody of the petitioner, which is from 14.06.2019, this Court is inclined to direct for his release



from jail during the pendency of the Trial.

The petitioner is directed to be released on bail on his furnishing bail bonds in the sum of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge (POCSO)-cum-Additional District & Sessions Judge-VI, Gaya in connection with POCSO Case No. 54 of 2019, arising out of Rampur P.S. Case No. 180 of 2019.

One of the bailors shall be the father of the petitioner. While furnishing bail bonds, the petitioner shall provide his and his father's telephone number, which shall be kept in operative condition till the conclusion of trial. The petitioner shall not leave the territorial confines of the district, where the trial is being conducted, without the prior permission of the Trial Court. The petitioner shall also get his presence marked before the officer-in-charge of the concerned Police Station on every Monday, failing which the bail granted to the petitioner would be rendered liable to be cancelled. The petitioner shall participate in the trial till its conclusion without fail and his absence from the trial



proceedings on any occasion would authorize the Trial Court
to proceed against the petitioner for cancellation of his bail.

The petition stands allowed accordingly.

(Ashutosh Kumar, J)

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