

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2060 of 2023**

Arising Out of PS. Case No.-77 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

Rakesh Rai @ Rakesh Kumar Rai Son Of Surendra Rai Resident Of Village
Motipur Bishar Ashthan Ps Motipur Dist Muzaffarpur

... .. Appellant/s

Versus

1. The State Of Bihar
2. Nirmala Devi Dharmendra Choudhary R/O Village-Motipur, FCI Godawn,
P.S.-Motipur, District-Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

5 15-09-2023 Heard learned counsel for the appellant as well as
learned Spl.P.P. for the State.

2. Despite of validly served notice, no one appears on
behalf of Respondent No. 2.

3. This is an appeal under Sections 14(A)(2) against
refusal of the prayer for regular bail by order dated 14.03.2023
passed by the learned Court of 1st Additional District Judge - 1st
cum Special Judge, SC/ST Act, Muzaffarpur in connection with
Mahila P.S. Case No. 77 of 2021, F.I.R. dated 11.10.2021
registered under Sections 341, 342, 376(D)/34 of the Indian
Penal Code and Sections 3(i)W(i) of the Scheduled Castes and
Scheduled Tribes Act.



4. According to the prosecution case, this appellant along with other accused persons have committed rape upon the informant in the house of Jagdish Sah which was vacant.

5. Learned counsel for the appellant submits that appellant is innocent and he has falsely been implicated in the present case. He further submits that the allegation as alleged in the F.I.R. is false and fabricated and the appellant has not committed any offences as alleged in the F.I.R. He further submits that except the statement of the victim, no cogent material has come during investigation to suggest the involvement of the petitioner in the present occurrence and even the medical report of the victim does not support the allegation as alleged in the F.I.R. He further submits that it has come during investigation that the statement of the women Renu and Shobha which was recorded in paragraph nos. 41 and 42 states that they have also not supported the case of the prosecution and they categorically stated that the informant is in a habit of threatening the people of false cases. He further submits that the police, after investigation, submitted charge sheet against the appellant. He further submits that the similarly situated co-accused, namely, Vikash Rai @ Vikash Kumar against whom there is similar allegation has been granted anticipatory bail by a



Co-ordinate Bench of this Hon'ble Court vide order dated 16.08.2023 passed in Cr. App (SJ) No. 2840 of 2022. The appellant is in custody since 06.02.2023.

6. Learned Special Public Prosecutor for the State has vehemently opposed the prayer for bail of the appellant and submits that there is direct and specific allegation against the appellant that he along with other accused persons have committed the gang rape of the victim but fairly submits that the medical report of the victim does not support the allegation as alleged in the F.I.R and the similarly situated co-accused person has been granted anticipatory bail and apart from that, the appellant carries one criminal antecedent other than the present one.

7. Considering the facts and circumstances of the case, let the appellant, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Court of 1st Additional District & Sessions Judge-1 cum Special Court of SC/ST Act, Muzaffarpur in connection with Mahila P.S. Case No. 77 of 2021, with other following conditions:-

i. Appellant shall co-operate in the trial and shall be properly represented on each and every date fixed by the court



and shall remain physically present as directed by the court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

ii. If the appellant tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

iii. And further condition that the court below shall verify the criminal antecedent of the appellant and in case at any stage it is found that the appellant have concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

8. Accordingly, the impugned order is set aside and this appeal stands allowed.

(Rajesh Kumar Verma, J)

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