

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28756 of 2023

Arising Out of PS. Case No.-7 Year-2022 Thana- MAHILA P.S. District- Muzaffarpur

Md. Alam Son Of Late Md. Sajrul R/O-Gangapur, P.S.-mushahari, Distt.-
muzaffarpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Hari Kishore Thakur, Advocate
For the Opposite Party/s :	Mr. Ramchandra Sahni, APP
For the Informant :	Mr. Sumit Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 28-06-2023 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 Mahila
P.S. Case No.7 of 2022 registered for the offence under Sections
376 and 493 of the Indian Penal Code.

The accused/petitioner is named in the F.I.R. and is in
custody since 06.02.2023.

The allegation against the petitioner is to commit
rape upon informant/victim on false pretext of marriage aged
about 19 years as per F.I.R. dated 28.01.2022.

Learned counsel appearing on behalf of the petitioner
submitted that informant/victim herself claimed through present
F.I.R. that she was 19 years of age at the time of occurrence, as



such implication under POCSO Act is an afterthought just to aggravate the implication against this petitioner. It is submitted that narration of F.I.R. suggests that occurrence cannot be categorized under rape as consensual physical relation was established, though on the false pretext of marriage as alleged. While travelling over the argument, it is submitted that in view of the facts as stated through F.I.R. occurrence cannot be categorized as rape and in support of the submission 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 duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for bail submitted that informant/victim supported the occurrence through her statement as recorded under Section 164 of the Cr.P.C. It is submitted that at the time of occurrence as alleged through F.I.R. that informant/victim was minor.

In view of the facts and circumstances as mentioned



above and by taking note of the fact that present implication appears, prima facie, for the reason that marriage of informant/victim could not negotiated with petitioner coupled with the fact that charge-sheet has already been submitted, where petitioner is in custody since 06.02.2023, let above named petitioner is directed to be released on bail in connection with Mahila P.S. Case No.7 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 Chief Judicial Magistrate, Muzaffarpur/concerned court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

U		T	
---	--	---	--

